

Policing Domestic Abuse in Scotland: a social  
constructionist approach.



A thesis submitted for the degree of Masters by Research  
(MbR)

by

Katarzyna Prusak

School of Social and Health Sciences,  
Abertay University.

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## **Declaration**

Candidate's declarations:

I, Katarzyna Prusak hereby certify that this thesis submitted in partial fulfilment of the requirements for the award of Masters by Research (MbR), Abertay University, is wholly my own work unless otherwise referenced or acknowledged. This work has not been submitted for any other qualification at any other academic institution.

Signed [candidates signature].....

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I, Dr Stuart Waiton hereby certify that the candidate has fulfilled the conditions of the Resolution and Regulations appropriate for the degree of Masters by Research (MbR) in Abertay University and that the candidate is qualified to submit this thesis in application for that degree.

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## **Certificate of Approval**

I certify that this is a true and accurate version of the thesis approved by the examiners, and that all relevant ordinance regulations have been fulfilled.

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## **Acknowledgements**

I would like to thank my supervisor Dr. Stuart Waiton for all the support and guidance he has given me throughout the dissertation process.

I would also like to thank the police officers who agreed to take part in my research. Without their participation and valuable input, this research project could not have been successfully conducted.

## **Dedication**

This dissertation is dedicated to my daughter Klara.

## **Abstract**

This paper tries to examine the origin and consequences of a specific crime control strategy in Scotland, namely the use of pro-arrest policies with relation to domestic abuse incidents. The researcher conducted interviews with 10 police officers and the narrative evidence seems to support findings of other studies on mandatory and presumptive arrest policies that suggest that those policies may be more harmful than beneficial. Of particular concern is the use of detention and arrest in cases where there is not enough evidence that a crime has been committed or in cases that may involve false allegations, as well as the potential for those policies to disempower victims and have the unintended effect of reducing reporting. The interviews also appear to substantiate the criticism that the application of a broad definition of domestic abuse leads to an intrusive policing of the private lives of an increasing number of individuals, even minors. Importantly, the net-widening effect of a broad definition of domestic abuse as well as an indiscriminate arrest policy result in system overload and, consequently, in the limited resources being directed away from the real victims of domestic abuse. Indeed, it is argued here that it is the retributive and symbolic element of those policies that makes them appealing to policy makers who see the punitive approach to crime control as necessary in order to reassure the public that they increasingly see as vulnerable. Importantly, this paper aims to provide an alternative explanation of the prominence of Domestic Abuse on political agenda in Scotland by placing it in its wider social, political and historical context and by examining it from a subjectivist stance as opposed to the objectivist perspective which means looking at it critically as a social rather than a purely natural phenomenon.

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## 2 Introduction

*It is just past dawn on a winter's morning and police officers are gathered in the landing of a high-rise block of flats in the west of Scotland. One of them is holding a "ramit", but this time the door is not battered down because the suspect answers. He is shown a warrant, which he must not touch. The man is told he is being investigated for domestic abuse – he laughs. (Gillan, 2014)*

The quote above is from an article published in The Guardian entitled *Scotland's got it right on domestic abuse: it takes it seriously* and it describes the work of the Domestic Abuse Task Force (DATF) which was created to target high-profile repeat offenders and which uses skills and tactics that were previously only used in homicide or other serious crime investigations. There are smaller Domestic Abuse Investigation Units (DAIUs) that have been established in every local policing division as well as specialist Domestic Abuse Courts in Glasgow and Edinburgh. There is also a dedicated National Prosecutor for Domestic Abuse that has been appointed by the Crown Office to oversee all the cases across Scotland and who is responsible for the continuous review of the prosecution policy with regards to domestic abuse and for raising awareness among prosecutors and the police. In line with the current 'partnership working' approach and the focus on risk assessment and risk management, the Multi-Agency Tasking and Coordinating Group (MATAC) was established to ensure effective cooperation between all the different partners and agencies involved with fortnightly meetings organised in every local policing division in order to identify and target those who pose the greatest risk of harm to victims. Alongside that, Scotland has also adopted the Multi-Agency Risk Assessment Conference approach or MARAC - first introduced in England by a national charity called CAADA (Coordinated Action Against Domestic Abuse)<sup>1</sup> - which too involves regular local meetings with representatives from various statutory and voluntary sector agencies and where the highest risk cases are discussed and action plans devised. It is worth mentioning that victims are not

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<sup>1</sup> It has changed its name to 'SafeLives' - <http://www.safelives.org.uk>.

present at those meetings but are instead represented by Independent Domestic Violence Advisors (IDVAs) which is arguably problematic and will be discussed in detail later on.

There is no doubt, therefore, that Scotland does indeed take domestic abuse seriously and even aspires to be a leading example on the international stage - a position it hopes to achieve with the help of DACU (Domestic Abuse Coordination Unit), another specialist body, which was created with this goal in mind. According to the Scottish Police Authority 'the aim of the DACU is to ensure that Police Scotland remains a pioneer on this issue and is recognised as a lead in the UK and international terms'<sup>2</sup>- its role includes, inter alia, monitoring and reviewing current practices and procedures, ensuring their consistency throughout Scotland and researching and developing best practice. Scottish Government's expenditure related to tackling domestic abuse is another indication of how high on the agenda this issue has been placed with millions of pounds spent every year. This is well illustrated in Fiona MacKay's (2008) analysis of the state of women's movement in Britain, in which she used the governmental response to domestic abuse as a proxy measure of feminist influence when analysing and discussing the different trajectories and different impacts of various women's groups in England and Scotland after 1997:

*Action against domestic violence or domestic abuse has been recognised as an achievement of the first Scottish Parliament and Scottish Executive. A strategic approach was adopted from the start through the 'National Strategy to Address Domestic Abuse in Scotland' in 2000. (...) Scotland tackled the issue in a 'joined up' way early and first. It had a head start of at least 3 years on England in terms of a national strategy, national refuge building programme and ring-fenced funding to tackle domestic abuse. (...) The Scottish Executive committed around £32 million to support work in this area for the period 2000-06. While comparisons between England and Scotland are difficult to make, if we take the respective populations as a guide (5m: 50m), then, crudely speaking, English spending would need to be in the region of £320 million*

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<sup>2</sup> <http://www.spa.police.uk/assets/126884/175734/item74-psosdomesticabuse>

*(2000-06) to be proportionate with Scotland. The most optimistic reading of the figures provided suggest spending in the region of £50 million in England, less than a sixth of Scottish expenditure in proportionate terms. (2008: 28)*

While the figures for 2000 – 06 are already impressive, since 2007 the amount of funding for domestic abuse projects has doubled<sup>3</sup> and when comparisons are made between England and Scotland on that matter, it should be remembered that the definition of domestic abuse used by the police south of the border is broader than the one used by Police Scotland (it extends to cover family members who are not partners) which results in a bigger range of potential crimes and offences to deal with and thus imply a need for greater financial input. Given the number of dedicated bodies and services in Scotland, the amount of resources committed to the issue and the fact that, as Sir Stephen House admitted, a quarter of Police time is consumed by investigating domestic incidents (McPherson, 2014)<sup>4</sup>, a troubling picture of domestic abuse emerges as a problem of pandemic proportions in Scotland, and that also seems to be the message propagated by the media. Indeed, it is an issue that has grown exponentially in terms of press coverage - a LexisNexis search of UK newspaper articles for the month of February 2016 returned 338 results with 'domestic violence' or 'domestic abuse' in the headline. In comparison, for the same period of 29 days in February 2000<sup>5</sup>, the result was only 15 articles – that is a 2153% increase. It has become a common feature in the media, from breakfast television<sup>6</sup> to primetime shows and documentaries, from TV soap operas to radio programmes and art exhibitions<sup>7</sup>, as well as national and local campaigns like White Ribbon<sup>8</sup> with billboards, posters and TV commercials. There seems to be a constant supply of stories of violence at home and on the

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<sup>3</sup> <http://www.bbc.co.uk/news/uk-scotland-tayside-central-18937984>

<sup>4</sup> <http://www.dailyrecord.co.uk/news/scottish-news/domestic-abuse-task-force-leave-3698141#1ebA8VRzVyrHbyav.97>

<sup>5</sup> Both 2000 and 2016 are leap years

<sup>6</sup> <https://www.thesun.co.uk/archives/news/1022834/tv-breakfast-show-host-takes-a-bald-stand-against-domestic-violence/>

<sup>7</sup> <http://www.together-uk.org/charity-art-exhibition-opens-pandoras-box-on-violence-and-abuse-against-women-2/> also

[http://www.burytimes.co.uk/news/14575653.Domestic\\_abuse\\_inspires\\_budding\\_artist\\_\\_39\\_s\\_exhibition/?ref=mrb&lp=7](http://www.burytimes.co.uk/news/14575653.Domestic_abuse_inspires_budding_artist__39_s_exhibition/?ref=mrb&lp=7)

<sup>8</sup> <http://www.whiteribboncampaign.co.uk/>

street that are commonly accompanied by a photograph of a woman with a bruised face (see example Figure 1 and 2). There are also awareness campaigns about DV and warnings issues to the public about the possibility of an increased risk of victimisation on various days of the year and indeed of the week, including during the festive period<sup>9</sup>, on Valentine's Day<sup>10</sup>, on days of major football games or during major tournaments<sup>11</sup> and over the weekend. As such, holidays and rest days, when more time is spent in the home, have, in part, become represented as potentially problematic in terms of domestic incidents and abuse.

Image removed due to copyright restrictions

*Figure 1*

Taken from [www.thecrossingpoint.co.uk/physical\\_abuse/](http://www.thecrossingpoint.co.uk/physical_abuse/)

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<sup>9</sup> <http://www.newstatesman.com/politics/welfare/2015/12/it-s-hardest-time-year-why-domestic-violence-spikes-over-christmas>

<sup>10</sup> <http://www.bbc.co.uk/news/uk-england-devon-16960173>

<sup>11</sup> <http://www.independent.co.uk/news/uk/domestic-violence-increases-25-during-england-world-cup-games-9548658.html> and also

<http://www.bbc.co.uk/news/uk-scotland-glasgow-west-24173811>

Image removed due to copyright restrictions

*Figure 2*

Taken from [www.mirror.co.uk/news/uk-news/how-austerity-britain-is-affecting-women-814805](http://www.mirror.co.uk/news/uk-news/how-austerity-britain-is-affecting-women-814805)

With this increased political and media coverage being devoted to the issue of domestic abuse, a question can be raised about the focus upon it and about the extent of the problem. Is the approach to domestic abuse disproportionate and if so what, if anything, are the consequences of this approach? Statistically at least, violent crime and crime in general has been in decline in Scotland for a number of years and according to the Scottish Government statistical bulletin for year 2014/2015, the level of recorded crime is at its lowest since 1974<sup>12</sup>. If these statistics represent a genuine fall in violence in Scottish society it is worth asking why in a world that is now safer and better than ever, where violent crime levels continue to drop, the focus is increasingly on safety and vulnerability. As Ramsay (2012) argues when discussing the political situation in the West and the focus on crime, safety and vulnerability, even if crime was really on the rise, despite evidence to the contrary, it would not by itself constitute an explanation of why Western politics has become so focused upon the issues of crime and personal security and characterised by harsh penal policies. After all, there are other possible responses to high crime rates as testified by penal welferism of the post war period, and any such response is ultimately a political decision. Discussing the issue of policing vulnerability, Ramsay notes that:

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<sup>12</sup> <http://www.gov.scot/Resource/0048/00484776.pdf>

*Post-democratic politics is focused on crime because its ideology, the belief system that legitimates the state power it deploys, constructs citizens as either vulnerable to predatory threats or as the source of those threats, as if they were the subjects of the state of nature. Actual crime rates are not entirely irrelevant but they only acquire any broader political significance in the context of the particular ideological lens through which they are viewed. Indeed, since, from the consensus point of view of post-democratic politics, citizens are above all understood to be potential crime victims, the politics of insecurity have persisted despite the fall in crime rates since the mid-1990s. (2012:229)*

Thus, it will be argued here that the current approach to theorising and policing domestic abuse should be analysed through the lens of what Ramsay (2012) calls 'the ideology of vulnerable autonomy' and the diminished subject it presupposes and that the recent developments in law and police practice related to dealing with this sensitive issue are underpinned by wider cultural and political trends such as the crisis of legitimacy of the western political and cultural elites. Indeed, it has been argued that it is the demise of Politics with a big P that is responsible for this new form of governance 'through crime' that is based on increasing regulation of everyday life and a preoccupation with issues of law and order as a substitution for real attempts to deal with the existential and economic insecurities faced by people in late, liquid, modernity (Bauman 2000a; Waiton, 2009). Thus, it will be argued that the increased interference into the private sphere - of which the current approach to tackling domestic abuse is but one example - may be seen as a product of politics with a small p - without a wider vision, an example of a reactive approach that replaces morality with law and prefers to manage crime as a thing in itself rather than seriously engage with its structural context (Bauman 2000a; Waiton, 2009). The concepts of therapeutic justice and the therapy culture and the wider turn towards emotionalism more broadly (Furedi, 2004) together with the elevation of the victim persona (Garland 2001; Waiton, 2009) are useful theoretical tools and will also be used to analyse the way domestic abuse is being conceptualised and policed in Scotland.

What this research hopes to achieve, therefore, is to provide an alternative explanation of the prominence of domestic abuse on political agenda in Scotland by placing it in its wider social, political and historical context and by examining it from a subjectivist stance as opposed to the objectivist perspective which means looking at it critically as a social rather than a purely natural phenomenon. In order to do that, this work will focus on the framing and signifying practices of those who helped to put domestic abuse on the forefront of public debate and policy considerations, i.e. the issue's most vocal advocates or, as social problems theorists call them, the main 'claimsmakers'.

## **2.1 The Aims and Timing of the Research**

Dempsey (2013) observes that there has been extensive analysis of 'mandatory and presumptive arrest policies' in the US and also analysis of the nature of police officer's use of discretion in abuse cases. This type of research has not however been carried out in Scotland despite the fact that concerns have been raised about the limited discretion available to police officers when attending residences where domestic abuse has been reported. This paper is an attempt to fill this gap and encourage more research into this area, research that is urgently needed given the fact that the Scottish Government has recently announced that it is planning a major reform of domestic abuse law that could see the creation of a specific new offence of domestic abuse that would include acts that are not currently considered to be criminal, i.e. acts that could be characterised as emotional and psychological abuse and that fall under the new umbrella term of 'coercive control'<sup>13</sup>. The concept of coercive control was developed by Evan Stark (2007) to refocus the approach to domestic abuse on behaviour that, as he argues, aims to subordinate, isolate and humiliate the victim instead of focusing on incidents of violence and his work has largely influenced the Scottish Government's new proposed bill.

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<sup>13</sup> <http://www.bbc.co.uk/news/uk-scotland-37365373>

What is more, Sir Stephen House, the first Chief Constable of Police Scotland and the person who made domestic abuse a priority - one of the five golden threads of policing in Scotland<sup>14</sup> – has recently stepped down from his position amid controversies around his style of ‘management’ and heavy-handed approach to policing as exemplified by what many have criticised as an excessive use of stop-and-search powers and the deployment of armed officers on routine patrols<sup>15</sup>. We are yet to see what changes the new head of Police Scotland, Phil Gormley, will bring but it is clear that there is room for improvement.

In order, therefore, to gain a clear understanding of the new developments in the policing of domestic abuse in Scotland and to try to assess them, the researcher decided to focus on the group that is in the forefront of tackling it, i.e. police officers. Indeed, it can be argued that the value of this research derives from the fact that it tries to reach those whose voices are largely absent in the debate, those at the bottom of the decision-making ladder - the main aim of using interviews is, after all, the ‘democratisation of opinion’ (Gubrium & Holstein., 2002).

## **2.2 Police Discretion and Mandatory and Pro-Arrest Policies**

*The exercise of discretion is what makes our criminal justice possible. Discretion over crime reporting and charging, discretion in sentencing and over the decision to release all help to make the system manageable. Discretion enables individual circumstances and progress to be assessed rather than compliance with rigid and inflexible rules. It also enables additional safeguards to be added in appropriate cases. (Whitfield in Williams & Nash, 2010: 197-98)*

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<sup>14</sup> <http://www.scotland.police.uk/assets/pdf/138327/150739/police-scotland-annual-police-plan-2013-14>

<sup>15</sup> <http://www.telegraph.co.uk/news/uknews/scotland/11827712/Sir-Stephen-House-quits-as-Police-Scotland-chief.html>



The above 'defence' of professional discretion in the Criminal Justice System was prompted by what Whitfield (*ibid.* 188) sees as its increasing curtailment by the 'risk-averse culture' and 'defensive decision-making' characteristic of CJS nowadays. This trend is particularly noticeable in relation to police approach to domestic abuse and the so called 'pro-arrest' policy in Scotland which, as Lynch (in Hughes, 2011:92) argues, results in a very limited discretion available to police officers when attending residences where domestic abuse has been reported.

The origin of mandatory and presumptive arrest policies for domestic abuse offences, as Hirschel et al. (2007:257) explain, can be traced back to the 1970s when a combination of a growing political pressure exercised by the women's groups, a series of lawsuits brought against police departments in the US for mishandling cases of domestic abuse and the promising findings of the first large scale experiment on the effects of arrest on domestic violence that was carried out in Minneapolis<sup>16</sup>, have all resulted in a 'nationwide movement toward arrest as the preferred response to domestic violence' from the 80s onwards. As Hirschel et al. (2007:257) argue, the main aim of this movement was the modification of police behaviour through legislative action.

While these policies have been extensively analysed in the US, this type of research has not however been carried out in Scotland despite the aforementioned concerns. Importantly, the debate in the States have identified a number of problems and unintended consequences of the mandatory arrest policies, and subsequent field experiments funded by the National Institute of Justice (NIJ) failed to replicate the results of the Minneapolis study and found no consistent support for the long-term benefits of arrest on reoffending (Novisky and Peralta, 2015: 67)<sup>17</sup>. Some studies have even found that in certain circumstances the arrest can actually increase the likelihood of domestic

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<sup>16</sup> Lawrence W. Sherman & Richard A. Berk, The Minneapolis Domestic Violence Experiment (1984); Lawrence W. Sherman & Richard A. Berk, *The Specific Deterrent Effects of Arrest for Domestic Assault*, 49 AM. Soc. REV. 261 (1984).

<sup>17</sup> See also Berk, Campbell, Klap, & Western, 1992; Dunford, 1992; Hirschel & Hutchison, 1996, 2003; Pate, Hamilton, & Annan, 1994; Sherman & Smith, 1992.

violence reoccurring - as was the case for those offenders who were unemployed or unmarried (Pate et al., 1992; Sherman et al., 1992).

In Scotland, the presumption of arrest with regards to domestic abuse suspects can be found in the Police Scotland and the Crown Office and Procurator Fiscal Service Joint Protocol entitled 'In partnership challenging domestic abuse'. which, while not having a legal force, determines police behaviour in those cases, it states that:

*When investigating incidents of domestic abuse, the police will ensure that all possible lines of enquiry are rigorously pursued and all available evidence is secured. Where appropriate, consideration will be given to the detention and interview of alleged perpetrators in order to secure further evidence. Where the perpetrator is not traced and is at large, he/she will be actively pursued until detained for interview or arrested.*

It also emphasises that police officers should make arrests regardless of the wishes of the victim, a position that represents a shift from earlier police practice with regards to domestic abuse incidents or, for that matter, from cases involving disputes between non-intimates (see for instance Hoyle, 1996):

*Where there is sufficient evidence available, the Police will take appropriate action, whether or not the victim makes a complaint, and will arrest the perpetrator and report the circumstances without delay to the Procurator Fiscal for consideration of prosecution.*

The aim of the interviews, therefore, was to assess the approach to domestic abuse in Scotland with regard to arrest and detention, and to find out what is the level of discretion afforded to police officers in those cases.

Most importantly, the interviews provided an opportunity for the police officers to voice their opinion on current law, procedures and the wider approach to domestic abuse, and, as a result, a number of challenges have been identified.

### 3 Methodology

One to one, semi-structured, interviews were conducted with ten police officers (3 of whom were retired police officers and two were from the special domestic abuse unit) who had been recruited using informal channels and the so called 'snowball sampling' technique because, as Ehrlich Martin (1999:115) observes, police officers tend to be quite a closed and isolated occupational group that views the public as hostile, and, as a result, they are often reluctant to criticize other police officers or the institution as a whole, at least openly. Also, using informal channels was considered more appropriate in order to avoid the involvement and possible pressure of direct superiors. In the end, however, four participants from the same police station had to seek formal permission to take part in the research as their supervisor had found out about it which, unfortunately, might have influenced their responses. Another limitation (a consequence of snowball sampling) in terms of the nature of the sample was that 7 out of 10 officers were from the same city and therefore, if there are any slight regional differences in terms of the approach to policing domestic abuse, they have not been reflected in the sample. Also, the majority of the interviewees were men (7), and only 3 were women, this, however, seems to be representative of the general Police population in Scotland. All but one requested to remain anonymous.

Semi-structured interviews were chosen as the appropriate method for data collection because the researcher anticipated that the replies to the questions might be complex and discursive and wanted to enable the interviewees to answer as fully as possible and to give them the ability to voice their views and expand on them freely. Indeed, the strength of using semi-structured, one to one, interviews instead of surveys, for instance, was that they enable the researcher to create a more informal, relaxed atmosphere that allows for a more flexible and open discussion that is influenced as much by the interviewee as the researcher. What is more, a more flexible interview structure allowed the researcher to adjust and fine-tune the questions based on the police officers' responses and helped to identify additional topics of concern.

Despite the difficult and sensitive subject, most of the police officers were keen to contribute and were generous with their time. The average duration of the interviews was about an hour with the shortest one lasting 35 minutes and the longest one -1 hour 40 minutes. The transcription generated 175 pages of data which was then analysed by the author to identify key recurring themes. While the coding was influenced by the literature review, especially the research on the mandatory arrest policies, and the subjectivist perspective adopted by the researcher, it arose largely from the interview data itself and the rich responses to the many open-ended questions in the interviews. The benefit of this approach is that it mitigates against the influence of the biases the researcher may hold, as Hoyle (1996:59) put it, '[p]re-coded directive questions can lead to a loss of accuracy because the answers might reflect the biases and world view of the researcher rather than that of the interviewee'. She also reminds us, however, that the influence of the interviewer cannot be completely eliminated and has to be taken into account:

*Of course, it is not possible to be free of the effects of interviewer - interviewee interaction. Any interview is a piece of social interaction. Parties have certain expectations about each other's attitudes which can affect their responses. (Hoyle 1996:59).*

### **3.1 Ethical Considerations**

The covert nature of the recruitment process may raise ethical objections, covert in the sense that the researcher did not inform Police Scotland about the research and did not seek formal permission to interview the police officers but informed consent was of course sought from the interviewees themselves. While the researcher realises the potential risk of harm any covert method may pose to maintaining a good relationship between the police as an institution and social researchers which is crucial for future projects not to be affected by a lack of trust on the part of the police, it was nevertheless decided that this approach can be justified on ethical grounds by the quality of the data obtained and the small scale of the project. Police force as an organisation can be a very

politicised environment and every member is expected to follow the official line in terms of any communication with the public, using unofficial channels, therefore, was considered necessary to avoid institutional pressure and to obtain valid data as opposed to what Holdaway (1984) calls 'stage managed' information.

### 3.2 Theoretical Perspective

While the interviews will deal with the reality of tackling the problem of domestic violence on the ground and with the experiences and opinions of those who have to apply the new policies and procedures, the theory of social constructionism and the work of Joel Best on the construction of social problems specifically will be used to analyse the processes that led to those new policies and procedures being advised and implemented and the way the problem of domestic violence is being framed. As Frawley (2016: 39) explains, to apply the constructionist approach to social problems is to look at 'language as a 'claims-making activity' (Spector and Kitsuse, 2001)'. She summarises this perspective well when she argues that what this approach aims to do is to:

*understand the rise of social problems not in terms intrinsic to themselves, for example, as a corollary of their objective 'harm', but in their changing social significance. In one of the best known programmatic statements of this paradigm, Spector and Kitsuse defined social problems not as harmful circumstances existing regardless of what we may know or think about them, but as 'the activities of individuals or groups making assertions of grievances and claims with respect to some putative conditions' (2001:75). From this perspective, or more specifically, the subsequently developed 'contextual constructionism', social problems emerge as discursive processes of meaning-making that transpire in concrete arenas of public life and whose success is heavily dependent upon cultural context (Gusfield, 1981; Best, 1987, 1990, 1993, 1995, 2008). (2016: 39-40)*

While there are other theoretical perspectives that can add to the largely positivist body of knowledge on domestic abuse and could have been utilised in this research like, for instance, the moral panics approach or a postmodern analysis of the state institutions involved in policing domestic abuse and the power and control they exert, it was thought necessary to start with how the problem is being discussed and conceptualised by those who have the power to define it, especially because there appears to be a contradictory approach towards domestic violence in areas of politics and policing in the UK. Dempsey argues that in Scotland politicians appear to misunderstand the COPFS and ACPOS position on this issue (2013:86). Rather than taking a gendered neutral approach, politicians appear to have adopted an approach based on the understanding of there being a patriarchal society. Viewing and analysing the issue of domestic abuse through the prism of social constructionism and exploring the influence of feminism and other ideologies is therefore necessary and should not be seen as negating the existence of the problem but an acknowledgment of the fact that all our meanings and understandings of the world are social creations, and most importantly, that the solutions that are being proposed are a result of the dominant definition/explanation of the problem. As Furedi (2011: 63) argues, the danger is that 'the influence of unquestioned, majority-sanctioned conventions could constrain individuals from exercising their autonomy' - with regards to, for instance, moral judgment, freedom of expression or in terms of exercising professional discretion as in the case of police officers. As he put it when discussing John Stuart Mill's concept of tolerance:

*'Mill's concern with social intolerance was underwritten by his conviction that a community's unexamined truths needed to account for themselves to avoid turning into dogma'. (2011:63)*

Indeed, it seems that the Feminist view on domestic violence has become dogma while any voices of criticism are being seen as heretical which makes rational discussion very difficult but all the more necessary.

Next chapter is designed to set the stage, to discuss the political and cultural climate that is arguably hospitable to the way the problem of domestic abuse is being represented while the following chapter will discuss the methods and rhetorical tools used by the key claimsmakers.

## 4 The Wider Cultural and Political Context

*Claims about the nature of the world reflect the culture that produced them but they are also constituent elements of that culture. Social actors draw on broader cultural scripts at the same time as they add new lines. (Frawley, 2015: 36)*

The aim of this chapter is to analyse the official response to the problem of domestic abuse by situating it in the wider historical, political and cultural context and to analyse the trends that helped to put the issue high on the political agenda. The battered women's movement which grew out of the women's liberation movement, managed to redefine the issue and draw more attention to it in the 1970s by placing it within the broader 'the personal is political' campaign that has emphasised the relationship between personal experience and larger social and political structures (Bailey, 2010: 1258). Radical feminists like Catharine MacKinnon argued that the public/private dichotomy conceals women subordination at home and that 'the veil of privacy around the home keeps women unsafe and vulnerable' (Bailey, 2010: 1262). In 1979, in their seminal work entitled 'Violence Against Wives: A Case Against the Patriarchy' Russell and Emerson Dobash provided a historical and social analysis of the roots, causes and prevalence of what they then called 'wife abuse' based on the concept of patriarchy, and the feminist analysis has been the dominant discourse on violence at home for the last few decades. Viewed through this prism of unequal power relations between men and women in society and gendered marital roles, physical violence becomes instrumental and calculated rather than deviant and impulsive, it is yet another mechanism to subordinate and oppress women. According to them, the belief in the privacy of marriage stems from and serves to maintain the patriarchal ideology by justifying state non-intervention.

As Bailey argues, however, many feminists do not in fact think there is no - or should not be any - distinction between the private and public sphere but simply want to emphasize how the two are interrelated (2010: 1262-63) and, as Hoyle (1996: 9-10) notes, it is those '[i]ssues about what should be public and what



should remain private, the nature of the family and the integrity of the individual' that 'split women's movement into liberal and radical camps'. Importantly, concerns have been raised about the negative consequences of dissolving the boundary between the two as observed by Michael Warner in his analysis of the centrality of the concept of private and public life to feminist theory:

*Such [abolitionist] rhetoric lumps together the enormous range of meanings of public and private, and it has therefore been blamed for everything from the rise of confessional memoirs to political correctness and the totalitarian tendencies of some legislative reform programs (hate-speech laws, antipornography statutes, and such). MacKinnon's legal programs, in particular, have been seen as justifying an authoritarian style of state regulation in the way they lead to the criminalization of pornography and sex rather than of domination or harassment per se. (in Stimpson & Herdt, 2015:368)*

With regard to the present approach to policing domestic abuse, similar concerns about intrusive state intervention into the private sphere have been raised. Part of the concern is the net widening effect of focusing on emotions as an area that needs to be policed. As Helen Reece (2012; para 5) argues, too broad a definition of domestic abuse that not only includes non-physical acts but makes them the main focus, encourages the pathologisation of behaviours that are part and parcel of intimate relationships, according to her:

*Just as insidious is the deeply unpleasant depiction of human relations in the definition. An expansive definition of domestic violence means that violent relationships are no longer the exception. Instead, we are encouraged to look for danger in our most intimate relationships and to be suspicious of our loved ones' normal behaviour. (2012: para 7)*

A similar view has been expressed by Erin Pizzey (2011), a family care activist and author who founded the world's first domestic violence shelter. She argues that expanding the definition of domestic abuse to include less serious acts that fall short of physical or sexual violence is equivalent to watering it down and will 'open the way to the ridiculous situation of our overstretched

police forces having to intervene in what are basically private disagreements and rows' (2011: para 26). Consequently, she claims that only cases of abuse which involve accusations of significant physical harm should warrant state intervention or otherwise we will end up criminalising people for failing to live up to the unachievable ideal of a perfectly harmonious relationship. As she put it, 'people behave badly in relationships because we have human frailties. This is not an area in which the State should meddle; leave it to relationship counsellors and divorce lawyers' (2011: para 27).

To understand this arguably intrusive and heavy-handed approach to policing domestic abuse in Scotland one has to place it in the context of a government that a number of commentators have referred to as 'authoritarian'<sup>18</sup>, 'Orwellian'<sup>19</sup> or creating a 'Police State'<sup>20</sup>. In an article from 2014, Kevin McKenna of the Guardian expresses his criticism of what he sees as an intrusive micro-management style of governance characteristic of the Scottish National Party:

*The SNP's disturbing, seven-year obsession with looking through the nation's keyholes to ensure we are all behaving, sitting straight, eating properly and getting to bed early continues. (2014a: para 1)*

This article was a response to the so called 'Named Person' legislation that introduces a 'named person' for every child and young person from birth until the age of 18, i.e. a professional appointed by the state to oversee the interests, and, in particular, the safety, of every minor. It is being opposed by the 'No To Named Persons' (NO2NP) campaign group that finds it unacceptable that this person can organise meetings with other professionals concerning a child's wellbeing without their parent's knowledge and question the child about their family life. Their main criticism is that the definition of wellbeing provided in the guidance is too broad, subjective and nebulous to be a basis for state

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<sup>18</sup> <http://thebackbencher.co.uk/the-snp-under-a-microscope-the-most-authoritarian-party-in-britain/>;  
[http://www.spiked-online.com/newsite/article/11970#.VnGAu\\_myOko](http://www.spiked-online.com/newsite/article/11970#.VnGAu_myOko);

<sup>19</sup> <http://www.scotsman.com/news/politics/snp-scotland-is-orwellian-says-tim-farron-1-3834851>

<sup>20</sup> <https://www.theguardian.com/commentisfree/2014/jan/19/scotland-snp-police-state-justice-secretary>

intervention. That is why they see it as enabling unprecedented surveillance of family life that amounts to a human rights breach, especially the Article 8 Right to a private and family life, and it raises concerns about data protection<sup>21</sup> - concerns that have recently been validated by a Supreme Court ruling which stated that the legislation breached human rights laws regarding data protection due to data sharing between professionals regarding the 'wellbeing' of the child<sup>22</sup>. What we can therefore witness is this wider trend towards family life surveillance by the state and what is particularly problematic is the very low threshold for intervention based on rather broad and unclear definitions.

In another article entitled *Welcome to Scotland, the SNP's police state* Mckenna (2014b) discusses what he believes to be examples of the abuse of police powers with their rather aggressive stop and search strategy and the targeting of young working class men as a result of the *Offensive Behaviour at Football and Threatening Communications* legislation that the SNP introduced in 2012 and which effectively criminalizes football fans for singing offensive songs at football matches, or for posting offensive messages on social media sites - the punishment for which may be prison. Given those accusations of the police being too heavy-handed and politicised and the fact that the time the police can detain somebody without criminally charging them has recently been doubled from 6 to 12 (and up to 24) hours<sup>23</sup>, pro-arrest policies for domestic abuse incidents seem even more problematic.

Another development that has also been considered controversial is the Scottish Government's plan to abolish one of the cornerstones of the Scottish legal system – a requirement to have two independent sources of evidence. While this proposal to do away with corroboration has been put on hold due to strong criticism from many sides, most notably from the judiciary<sup>24</sup> (although

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<sup>21</sup> [http://no2np.org/wp-content/uploads/no2np\\_11reasons.pdf](http://no2np.org/wp-content/uploads/no2np_11reasons.pdf)

<sup>22</sup> <http://www.telegraph.co.uk/news/2016/07/28/supreme-court-blocks-snps-controversial-named-person-scheme/>

<sup>23</sup> Criminal Procedure (Legal Assistance, Detention and Appeals)(Scotland) Act 2010

<sup>24</sup> <http://www.telegraph.co.uk/news/uknews/scotland/10429491/Lord-Hope-Scrapping-corroboration-is-quite-dangerous.html>

Lord Carloway was in favour<sup>25</sup>) it is important to note that the main argument used by the then Justice Secretary Kenny MacAskill who brought forward those plans, was that it would help the victims of domestic and sexual abuse as it would be easier to prosecute those crimes that happen largely in private. Indeed, in the present Criminal Justice system in which victims take centre stage (Garland, 2001; Waiton, 2009), their interests are often considered more important than the interests and rights of the suspects – in this instance, it led to a situation in which the principle articulated by David Hume that ‘no one shall in any case be convicted on the testimony of a single witness’<sup>26</sup> started to be considered problematic and regressive rather than what it used to be celebrated for, a necessary safeguard in an unequal confrontation between an individual and the state.

While the focus of this work is domestic abuse and the way it is being policed in Scotland, this paper argues that all the different examples above of recent developments are interrelated and underpinned by wider cultural and political trends. Those trends have been summarised by Stuart Waiton (2016: 2) in his paper on the Named Person:

*There has been a shift in politics and a development of micro-management policies and initiatives summed up perhaps most simply through the idea of ‘the politics of behaviour’ (Field, 2003; Blears, 2004). In part, this has been influenced with the emergence of the ‘therapeutic state’ (Nolan, 1998) and the elevated significance of the emotional life of individuals, an emotional life that Furedi believes is predicated upon a diminished view of the human subject and a universalising understanding of people (especially children) as being fundamentally vulnerable and consequently, in need of support (Furedi, 2004).*

Thus, while a number of political and social commentators argue that it is the Scottish National Party and their policies that are responsible for what they perceive to be an authoritarian turn, those policies arguably reflect trends

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<sup>25</sup> See the Carloway Review at <http://www.gov.scot/About/Review/CarlowayReview/Executivesummary>

<sup>26</sup> David Hume, Commentaries, ii p.385 (241)

present across the UK and to some extent within the West. Scotland, therefore, is not unique in its display of the so-called penal populism and hyper-regulation of public and private sphere that is characteristic of politics in general nowadays regardless of the political persuasion. In fact, it has been argued that it is the demise of Politics with a big P that is responsible for this new form of governance 'through crime' that is based on increasing regulation of everyday life and a preoccupation with issues of law and order as a substitution for real attempts to deal with the existential and economic insecurities faced by people in late, liquid, modernity (Bauman, 2000b; Waiton, 2009). Importantly, as Waiton argues, due to the collapse of politics on both side of the spectrum, the role of the political elite has also been transformed. As he put it:

*Rather than competing for the conflicting political subject in society, the role of politicians now became to act as advocates for a diminished subject – the crime victim and the vulnerable public. Crime expanded as a field of governance due both to the political elite's sense of diminished capacity and control over society, and with the construction of a more fragile subject that needed ever more protections. (2009:359)*

Bauman argues (2000a:214) that instead of confronting the underlying sources of contemporary anxieties the focus is on responding to people's feelings of personal safety and showing that something is being done about it. Indeed, he maintains that being seen to be doing something is often more important for the state than getting real results while the often harmful consequences of this kind of justice on display are being disregarded. According to Lynch in his contribution to 'Domestic Abuse and Scots Law' (in Hughes, 2011: 92), the pro-arrest approach to domestic abuse has arguably led to a situation when police officers are under a lot of pressure to detain or arrest someone every time they attend a domestic abuse call even though there is no such legal requirement and, more worryingly, despite that fact that they may not have sufficient evidence that a crime has been committed which results in many people being unnecessarily kept in custody for hours on end before being liberated on the procurator fiscal's instructions due to lack of corroboration. To understand the problematic nature of such an indiscriminate approach it is

useful to turn to Frank Furedi's discussion on the proliferation of this kind of zero tolerance policies in society in general. As he put it:

*These are policies that are meant to be applied arbitrarily and punish without regard to circumstances, sparing judges and officials from having to think about the circumstances affecting a particular event and from exercising their capacity to discriminate. The abolition of discretion reflects a general unease with the act of judgement: yet judgement and discrimination are essential qualities for developing both the disposition to tolerate and an understanding of what form of behaviour cannot be tolerated. (Furedi, 2011, 13-14).*

#### **4.1 Eliminating the Risk at All Costs?**

Drawing on Durodie's (2005:21) concept of the 'Risk Perception Society', i.e. the claim that western societies are characterised by a 'heightened consciousness of risk both amongst ordinary people, but also the elite of society' that is a result of a 'broader process of social fragmentation and isolation', it can be argued that the changes in policing domestic abuse can be seen as an attempt by the risk-averse state to eliminate human error when it comes to police work and that it results in a general mistrust towards the exercise of personal judgment and discretion. But autonomy and discretion are not the only casualties of what Durodie (2005:8) calls the 'politics of fear, or risk-regulation', he maintains that the 'exaggerated perception of risk lends itself to increasing demands for greater regulation and social control' at the expense of individual freedoms. A similar point was made by Andy Williams and Mike Nash in their introduction to the *Handbook of Public Protection*:

*Currently in the UK we tend to err on the side of caution and take a more punitive stance towards individual freedoms, restrictive sentencing and offender management practices. All of these are 'justified' by the public protection (community safety) discourse. (2010:5)*

Indeed, this paper argues that the rights of suspects and defendants are often being sacrificed in order to reassure the general public that is increasingly seen as vulnerable. The already mentioned cases of illegitimate detention, as Clare Connelly (in Hughes, 2011:118) notes, can raise human rights concerns but there are other developments that can also be seen as undermining fundamental rights and freedoms; the *Victims and Witnesses (Scotland) Act 2014*, for instance, extended the category of ‘vulnerable witnesses’ by prescribing that alleged victims of certain crimes like sexual offences, domestic abuse or stalking should automatically be considered vulnerable regardless of their age, mental health or risk of harm due to testifying. As a result, victims of those crimes are entitled to utilise certain special measures as witnesses in criminal proceedings, such as giving evidence via video link (it has even been recommended recently by the Scottish Courts and Tribunals Service to introduce pre-recorded evidence in cases with vulnerable witnesses<sup>27</sup>). What is troublesome about this is the ever-expanding definition of vulnerability and how easily that label is being accepted and even demanded as exemplified by the Victim Support Scotland’s call for special measures to be available to all witnesses<sup>28</sup>. The danger is, as with all definitions that try to be too inclusive, that it will become so broad as to be meaningless, and while it is important to take into account the needs and the interest of the victim it should not be done at the expense of the accused and his/her rights. The right to examine one’s accusers is a crucial safeguard against malicious allegations and is written into the International Covenant on Civil and Political Rights and the European Convention on Human Rights, and it should be fiercely defended given the fact that false allegations of domestic or sexual abuse can be extremely damaging to one’s reputation<sup>29</sup> and are rarely being prosecuted. With regards to sexual offences for instance, alleged victims of which are also considered vulnerable witnesses, a Home Office study from 2005 (Kelly et al.)<sup>30</sup> found that out of 2,643

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<sup>27</sup> Evidence and Procedure Review- Next Steps, 26 February 2016

<sup>28</sup> <http://www.victimsupportsco.org.uk/wp-content/uploads/2015/07/VSS-Manifesto-2011-2015.pdf> - see page 6

<sup>29</sup> <http://www.telegraph.co.uk/men/thinking-man/11912748/Guilty-until-proven-innocent-life-after-a-false-rape-accusation.html>

<sup>30</sup> <http://webarchive.nationalarchives.gov.uk/20110220105210/rds.homeoffice.gov.uk/rds/pdfs05/hors293.pdf>

allegations of rape, 216 were classified as false allegations (around 8%) but only six of those cases resulted in the arrest of the complainant while just two women ended up being charged - which amounts to 0.07%.

## **4.2 Dangerous Masculinity**

Garland (2001) argues that political fuelling of punitive sentiments is reinforced by the dominance of the so called 'criminology of the other' and that it allows for a form of divide and rule strategy which accords a position of moral superiority to those vulnerable, respectable, individuals being at risk of victimisation at the hands of the other - dangerous and disreputable - elements within society. It can be argued that the common conflation of domestic violence with violence against women - as best exemplified by the adoption of the gendered definition of domestic abuse by the Scottish Government<sup>31</sup> - causes this process of othering and moral condemnation to be applied to men in general. Dutton and Nicholls (2005: 707) talk about 'a dangerous "ingroup/outgroup" form of siege mentality' that 'has enveloped feminist activists and those researchers who share their dogma'. In terms of public debate, it is common nowadays to have discussions about introducing sex segregated trains and to praise inventions like rape drug-detecting nail polish or personal panic buttons for women, and young men today quickly learn that their masculinity is seen as problematic - from debates on banning fraternities to being 'invited' to special classes on consent when they start university<sup>32</sup>. Even boys who are escaping domestic abuse but happen to be 12 or older, fall victims to those gender stereotypes and divisions as they are often not allowed to stay at the refuge shelters with their mothers (Pizzey 2011: para 31) which again sends the message that it is men in general, not particular individuals, who are the problem. Boris Johnson was expressing his concern about this tendency in our society to view all men as potential abusers when he said that those who succumb to moral panics over abuse 'fail to understand the terrible damage that

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<sup>31</sup> <http://www.gov.scot/Topics/People/Equality/violence-women/Key-Facts>

<sup>32</sup> [http://www.huffingtonpost.co.uk/2015/10/14/people-are-really-angry-about-what-this-student-wrote-about-consent\\_n\\_8293104.html](http://www.huffingtonpost.co.uk/2015/10/14/people-are-really-angry-about-what-this-student-wrote-about-consent_n_8293104.html)



is done by this system of presuming guilt in the entire male population just because of the tendencies of a tiny minority' (2006: para 10). This comment was a response to a controversial British Airlines' seating policy of preventing adult male passengers from seating next to unaccompanied children that was successfully challenged in court in 2010. Johnson linked such blatant discrimination based on sex to the decreasing numbers of male teachers and the resulting scarcity of male role models in the classroom and the wider society. It is rather telling that when an extreme measure such as a curfew for men is discussed<sup>33</sup> in the media, the discussion focuses on the possibility, rather than the desirability of introducing it. When asked about the idea, Dr Suzanne Clisby, Director of Postgraduate Studies at the School of Social Sciences from Hull University replied:

*I do not think curfews are an effective way to deal with violence against women (...) The best a formal curfew could hope to do is send a message from the State that violence against women is seen as unacceptable and will be taken seriously, but unless this were followed through in a whole range of other ways it is fairly pointless. (Montes, 2014: para 9)*

She also added that imposing such a curfew could have a negative effect of perpetuating 'the myth that violence against women happens only at night by strangers' (*ibid.* para 11). Dr Alison Phipps, Director of Gender Studies at the University of Sussex, was also sceptical that it could be introduced in the UK, as she put it:

*I can't see how it could be enforced. Unless it had a consensual element, where men took part willingly as part of a social experiment or political statement, which might be quite effective. (ibid. para 17)*

It is rare to find anyone argue against it precisely because it would be an extreme measure, violating human rights, rather than because of its

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<sup>33</sup> Would a Curfew On Men Be Good for Society? - [http://www.vice.com/en\\_uk/read/curfew-colombia-155](http://www.vice.com/en_uk/read/curfew-colombia-155)

impracticability and likely ineffectiveness since women are usually victimised by someone they know, not a stranger – the issue is being analysed exclusively from the perspective of one group.

Furthermore, it seems that those who are tasked with protecting the victims of domestic abuse have also started to be treated with suspicion and this is arguably reflected in two recent developments in law and practice related to policing. Firstly, the *Victims and Witnesses (Scotland) Act 2014* established that victims of certain crimes, domestic violence being one of them, have the right to choose the gender of their interviewer and this is problematic for a number of reasons. Practical issues aside, it is problematic because it allows gender to be a factor when considering someone's professional suitability and that is something that the feminists have fought against and something that should always be considered regressive rather than progressive, especially given the fact that we are not talking here about a victim of a sexual offence who can choose the gender of their medical examiner but someone who is an alleged victim of domestic abuse or stalking not wanting to talk to a given officer just because of their gender. What is more, since the types of crimes to which this law applies are generally considered to fall under the umbrella term of violence against women (crimes like sexual offences, traffic in prostitution, stalking), it seems to be predicated on the assumption that female police officers may be preferred by female victims either because male officers may remind them too much of their male victimizers or because male officers may lack the attributes normally associated with femininity like sensitivity, empathy, etc. As Ehrlich Martin (1999) argues in her paper on emotional labor related to police work and its gender dimension, this kind of stereotyping has long been associated with police work and does not recognize the amount of emotional labor male police officers too must perform while also having negative consequences for female police officers as they meet with conflicting expectations from both the public and within the force and are often relegated to do service-related aspects of the job that are considered feminine and thus of lesser value (1999: 117). When discussing the challenges female officers face due to the gender stereotypes she notes that:

*Citizens generally defer to police, but in some instances they may seek to disrupt normal interaction by disavowing the officer's police identity and relate person to person by refocusing the interaction on irrelevant statuses, such as age, race, ethnicity, or gender, to gain an advantage (Goffman 1961). Such interruptions are more prevalent and problematic for women because of the close association of authority and control with masculinity. Thus women must find ways to turn these interactions to their advantage, by minimizing attention to their sex category or by taking advantage of it. (Ehrlich Martin, 1999:117)*

What is more, a study conducted by Apsler et al. (2003) examining *Perceptions of the Police by Female Victims of Domestic Partner Violence*, found that 'female victims' ratings were not systematically influenced by their interviewer's sex' (2003:1328). Thus, however well-intentioned this law might be, it seems to be influenced by, and reinforce, gender stereotypes and it arguably reflects the general distrust of men and masculinity.

Secondly, in terms of police practice, body-worn cameras are increasingly being used in Scotland and the rest of the UK and a national roll-out seems to be postponed only by financial reasons<sup>34</sup>. While increased accountability and transparency are often cited as an argument for their introduction, together with the evidence-gathering benefits it provides, Luke Gittos (2014) argues that what this move really illustrates is a crisis within the Police that results in a further erosion of police officers' discretion. According to him, it shows that relying on police officers' abilities and personal judgment to investigate crimes properly is considered insufficient and risky, especially with regards to offences for which handling the police have been criticised in the past, like domestic violence. He claims that the use of cameras effectively replaces an active and experienced investigator with an 'animated investigatory tripod' whose main task is to capture people's emotions that will later help to influence the outcome in court, rather than to investigate objectively. As he put it:

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<sup>34</sup> <https://www.holyrood.com/articles/news/body-camera-roll-out-police-scotland-some-way>

*This has little to do with public trust, or police accountability; but it does say a lot about the police's lack of faith in themselves to be objective and reasoned in their approach to investigating crime. (Gittos, 2014: para 6)*

### **4.3 The Vulnerable Public and Victim Identity**

*The need to craft a compelling narrative means that social problems tend to exhibit common strategies such as alleging situation and emphasizing the suffering of vulnerable innocents. (Frawley, 2016: 44)*

According to Ramsey (2012), the dichotomous view of the public promoted by the 'ideology of vulnerable autonomy' in which individuals are understood to be primarily either vulnerable to criminal victimisation or the causes of it, results in an elevation of the victim of crime to the centre stage and, as a consequence, in an increasingly harsher treatment of offenders who are often seen as undeserving of basic human and civil rights (as best exemplified by the treatment of terrorist suspects who are seen as the ultimate threat to our subjective sense of security). As Garland (2001) argues, the victim-offender relationship has come to be treated as some sort of a zero-sum game in which the interests of the victims are counter-posed to those of the offenders and any attempt at protecting the rights of the latter are seen as an attack targeted at the former. The dangers of this way of thinking are arguably most visible in relation to accusations of rape and sexual abuse where the approach of officials is so influenced by the prevalent ideology of victimisation that, according to Barbara Hewson, the police can effectively be seen to 'actively solicit allegations with the promise, 'You will be believed' which 'militates against the idea that allegations need to be investigated' (2013: para 1). According to her, the 'you will be believed' mantra 'fosters an unreal expectation on the part of complainants, and the victim lobby, that their accounts should not be challenged or questioned robustly' (2013: para 3). This belief that sexual violence victims and indeed victims of domestic abuse ought to be treated differently as to avoid re-traumatising them is dangerous for at least two reasons, as Hewson put it:

*First, it creates an ideal climate in which those who have not been abused can claim that they have been. Second, it ignores the ease with which false memories of abuse can be created, whether by self-persuasion, interaction with victim/survivor groups, or influence by third parties with axes to grind. Those third parties may include therapists, policemen, injury lawyers, campaign groups, and journalists avid for scandal. All these players espouse the ideology of victimisation. (2013: para 3)*

Garland (2001:11) argues that because ‘the new public imperative is that victims must be protected, their voices must be heard, their memory honoured, their anger expressed, their fears addressed’, politicians assumed the role of victim advocates who pursue penal policies aimed at responding to real or projected feelings and interests of those they try so eagerly to protect. It is common practice nowadays to name new laws after particular victims like Sarah’s law<sup>35</sup> or the recently introduced Clare’s law<sup>36</sup> and for families of crime victims to be consulted regarding policy matters or asked to speak at party conferences. Because the persona of the victim of crime is thought to be representative of society at large, those who speak on behalf of the victims may claim that they represent everyone’s interests. As Waiton (2009:372) put it when discussing the elevated status of victimhood in contemporary western society:

*The ‘victim’ (...) has become iconic in late 20th-century life, an icon based upon a more individuated sense of insecurity among the public, but also one that was a representation – a mirror image – of the diminished elite itself: an anxious elite that lacked the capacity to direct social processes and side-stepped any attempt to order society around a coherent sense of right and wrong.*

This representation of everyman as a victim has led to an erosion of the traditional notion of the public as made up of strong, independent, individuals

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<sup>35</sup> The Child Sex Offenders Disclosure scheme

<sup>36</sup> The Domestic Abuse Disclosure Scheme

united by common goals and interests. As Garland (2001:11-12) argues, today the public is dis-aggregated and 'it is no longer sufficient to subsume the individual victim's experience in the notions of the public good: the public good must be individuated, broken down into individual component parts'. While in the times of penal welferism the victim of crime was understood to be an unfortunate citizen whose episode of victimisation was rather atypical and who was just representing the wider public in criminal proceedings, now the experience of victimisation is said to be more common and to have a lasting impact on one's life and identity. Consequently, he maintains that the public is characterised by its vulnerability to both crime and the fear of crime. Thus, whereas historically it was the protection of individuals from the power of the state that was understood to be the main goal of a liberal society, today's public, Garland argues, increasingly seeks, and is encouraged to seek, protection by the state which results in state's intrusiveness in more and more areas of life. This rather diminished notion of the public and the assault on the Enlightenment's ideal of independent free-thinking, individual subject is, as Furedi (2004) beliefs, characteristic of not only the official state ideology but also of contemporary western culture. This mutually reinforcing relationship is visible in the case of the so called new feminism that not only penetrates the political sphere but is a cultural and media phenomenon – what Brendan O'Neill (2015) calls a 'global franchise' – followed and 'advertised' by pop stars and politicians alike. Indeed, according to him, part of the explanation of its expansion to virtually all spheres of life in the West is the fact that:

*the new feminism can be seen as mission creep: an old movement looking for a new role now that its original aims have largely been achieved. This would explain why it is so obsessed with culture, with how people think and speak and with what words they use or images they view. Having achieved equality in the legal and work spheres, some feminists are now moving into the realms of culture and even thought, where their politics, or any politics for that matter, has no place. The end result is often intolerance, a demand not only that society remove all the barriers to women's engagement in public life — which is a good demand — but also that people and art and culture think about and depict*

*women in a particular, 'correct' way, which is an illiberal demand.* (2015, para 10)

He goes on to argue that in order to fully understand why, at a time when the situation of women in the western world has already vastly improved and when the other radical movements of the 70s seem to be shadows of their former selves, the new feminism has come to enjoy such a high, almost religious, status in the west, it has to be analysed in the wider context of the decline of Western values discussed here earlier. Indeed, to him the new feminists seem to be spearheading the attack on the legacy of the Enlightenment with their overt distrust and criticisms of its core values such as reason, individual autonomy and the belief that we can master the world around us as all those ideals are considered to be 'male' – that is cold, calculative and underpinned by the desire to dominate. They argue that the Enlightenment and Industrialisation have led to a world dominated by self-interest, competition and aggression, where people and nature are being exploited and what is needed now is a focus on values considered to be more 'female' like intuition, emotions, empathy and interdependency. It could therefore be argued, that the new feminism has greatly contributed to what Frank Furedi (2004) calls one of the most significant developments in contemporary western culture, namely – the turn towards emotionalism. As Frawley (2016:35) argues,

*While governments have always been concerned with the management of the public mood, the widespread appeal of the semiotics of emotion only becomes possible long after the passions that once incited people to act have been tamed.*

Indeed, according to O'Neill, what the new feminism offers to 'the fractured, post-political elites of the West' is a 'moral and political glue' that makes those elites look united by a seemingly progressive cause (2015, para 18), it is, as he put it:

*clothing being worn by an Emperor who is shaking off old progressive ideas, but who wants to make this shaking-off look like something forward-looking and*

*women-friendly rather than what it is: anti-human, a rewinding of the gains of modernity, which is harmful to both men and women. (2015, para 42)*

Thus, the so called therapeutic justice, confession culture and the elevation of the victim persona are all reflections of this wider attempt of the political and cultural elites to 'soften' their image and they all play an important part in the way domestic abuse is being conceptualised and policed.

Not surprisingly then, when it comes to the new feminism, or what Green (in Pizzey, 2000) calls 'ultra-feminism', the use of the victim status becomes a conscious strategy to gain and maintain political power, power that is:

*based upon a concept of a defenseless group of people being victimized by a larger, stronger aggressor. When people start recognising that, indeed, domestic violence seems to occur both ways, that undercuts the whole concept of weakness, out of which comes power. It's based on a concept of being an exclusive victim. (in Pizzey, 2000: viii)*

#### **4.4 Gender Wars**

The concern is that domestic abuse is being represented largely through a feminist patriarchal lens and that, as a result, male victimisation is often being ignored. Nick Smithers, the National Development Officer for Abused Men in Scotland, argues that this 'ingrained, gendered conceptualisation (...) renders male victimhood counter-intuitive' (2013: para 6) and that the patriarchal ideology is the 'guiding hand of domestic abuse policy here in Scotland and beyond' (2013: para 9). He expressed his concern that the incorporation of the concept of 'gendered based violence' into many governmental publications and official discourse on domestic abuse can constitute yet another barrier for male victims seeking help (2013: para 7). Brian Dempsey in his report on 'Men's Experience of Domestic Abuse in Scotland' notes that there is an absence of men's 'voices' with regard to domestic abuse and that to some extent there may be a problem of 'stereotypical beliefs about domestic violence' influencing the



way domestic incidences are policed (2013:88). He believes that this dichotomous, black and white representation of the problem of domestic abuse is harmful not just to men but also to women as the concept of patriarchy is not able to explain things like for instance violence in lesbian relationships and the experiences of the LGBT community are largely ignored by many feminists as they threaten the coherence of their definition of the problem. As a result of the dominance of the violence against women perspective or what Donovan and Hester (2010) call the “public story” of domestic abuse, victims from same sex relationships and indeed men from mixed-sex relationships, face numerous practical obstacles such as lack of accessible support services, as well as ‘psychological barriers such as embarrassment and fear of being disbelieved’ which greatly reduce the likelihood of those marginalised victims reporting the abuse (Dempsey, 2013:7). This, in turn, leads to a situation where abusive women in both same-sex and mixed-sex relationships as well as men in same sex-relationships benefit from the “public story” or ‘the system’s perceived heterocentric response’ by misusing it to control their partners and to facilitate the abuse (Dempsey, 2013:33). What is more, this seemingly progressive moral outlook that represents individuals, especially women, as vulnerable, results in an increased state interference in more areas of life and the policing of thought and speech, and it also undermines women as moral and rational actors by portraying them as unwitting victims in need of protection from the state. Indeed, a common claim made by the women’s groups is that women often do not realise that they are victims and that they should ask for help. Helen Reece (2006:559) discusses this in her work on UK women’s groups and their child contact campaign, she notes that the statistic used by a national charity ‘Refuge’ was that ‘only one third of abused women agree that they are domestic violence victims’. She goes on to argue that it ‘would be hard to accept that two-thirds of women do not realise that they are being battered’ if it was not for the broad definition of domestic abuse promoted by the women’s movement that includes a wide range of non-physical behaviour, so wide in fact that it arguably makes it difficult for the law to distinguish pathology from problems, arguments and conflicts present in every relationship at some point or another (2006:559). She also maintains that women’s groups’ exclusive reliance on the violence-based rhetoric in the child contact campaign, while understandable from the

consensus building point of view, was not in the mothers' best interest as it ignored other feminist critiques, based on mothers' autonomy for instance. This strategy resulted in the creation of two categories of mothers, those who refuse contact due to fear of victimisation and those who, not having been victims of abuse, do not have 'an excuse' to restrict father-child contact – thus, if they do, they are labelled 'unreasonable'. This kind of argumentation is harmful to women as it denies them their agency and presents them in simplistic, even contradictory ways using only binary categories – they are either innocent victims or bad, revengeful mothers. As a consequence, women are arguably under pressure to conform to those high societal expectations of how they should behave when they perform their roles as mothers, wives and partners and any deviation from what is considered to be the appropriate feminine behaviour warrants public criticism and highly punitive responses - a widely studied example is the representation and treatment of women who kill. Indeed, female offenders are considered to be 'doubly deviant' for not only violating the law but also the gender norms and, as a result, they are often judged and treated more harshly than male offenders (Lloyd, 1995). What is more, it has been argued that due to society's firmly held belief that women are not capable of violence, those women who do commit extreme acts of violence are portrayed by the public and the criminal justice system in a way that aims to neutralize the challenge they pose to the dominant discourses regarding gender and social structures based on them (Weare, 2013). As Weare put it when discussing the different categories female offenders are forced into in order to justify their behaviour:

*These women are labelled as either mad, bad or a victim, by both the criminal justice system and society, depending on the construction of their crime, their gender and their sexuality. Symbiotic to labelling women who kill in this way is the denial of their agency. That is to say that labelling these women denies the recognition of their ability to make a semi-autonomous decision to act in a particular way. (2013: 337)*

While this 'demonization' and labelling of female offenders has been widely recognised and challenged, especially by feminist writers, those same feminist

scholars and activists are often reluctant to question the construction of women as powerless victims. On the contrary, they embrace the victim persona as it guarantees public sympathy (Reece: 2006), and offers a prism through which all behaviour is interpreted, especially the behaviour that undermines the feminist representation and definition of problems like domestic abuse. Women's violence towards their partners therefore is explained almost exclusively in the context of self-defence, or as an act of retaliation (Daly and Wilson 1988; Browne, Williams and Dutton 1999; Pagelow, 1985; Dobash and Dobash 2004). A woman's unwillingness to make the 'right' choice and report or leave her abusive partners is seen as an incapacity to do so. Instead of empowering women, this kind of rhetoric contributes to the denial of their agency and results in an intrusive and patronising state intervention that is often against the wishes of the women involved as is the case when arrests are made despite their protest or decisions made and safety plans devised at MARAC (Multi-agency Risk Assessment Conference) without the presence of the women concerned. What is more, this one-dimensional and idealistic representation of women creates certain expectations of how a victim of domestic abuse or rape should behave and those who fall short of that 'ideal'<sup>37</sup> may not be afforded the same level of sympathy. This is especially true of male victims because, as Dempsey (2013:35) argues, to show or talk about one's emotions or to appear vulnerable is 'to violate the rules of hegemonic masculinity and risk ridicule as being other than a "real man" (Connell, 2005)'. Even if a man is willing to accept and proclaim his victim status, Dempsey (2013:42) maintains that he may still find it difficult to live up to the expectations that the criminal justice system and other agencies have of how a domestic abuse victim should behave, like, for instance, the expectation that the victim will exhibit help-seeking behaviour. In his paper on the systematic exclusion of men and fathers from the child protection system in Scotland, Nick Smithers (2012) highlights the difficulties men face when negative societal stereotypes about masculinity and men's role within society and family in particular influence the way they are perceived and treated by social services and the legal system. One of the men he interviewed for his research expressed his frustration with the fact that even though he was

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<sup>37</sup> for more on the concept of an ideal victim see Nils Christie, 1986.

a victim of malicious allegations and abuse at the hands of his ex-partner, his case was not treated as seriously as it probably would have been if he was a woman:

*If we switch the sexes round here and look at it that I was the female and someone was attacking me and setting fire to my property and making such allegations which were all false and nonsense about me and abusing my kiddy, this would not have panned out this way... It seems to me that if you're female all you have to do is deny it, maybe cry you know and it's accepted when... maybe us guys don't do ourselves any justice because we don't cry. (2012: 16)*

Being disbelieved and denied support from statutory service providers have been said to be common experiences for male victims of domestic abuse (Brogden & Harkin, 2000; Stitt and Macklin, 1995) and this, as well as the fear of becoming an object of ridicule rather than sympathy prevents many men from reporting abuse or disclosing it to someone (Machietto, 1992, Steinmetz, 1980). As George (1994: 11) argues, 'the traditional stereotypes give creditability to a woman to be seen as a victim' while 'the stereotypes associated with men (...) lead most to deny such a possibility or to ridicule such a notion as male-as-victim'. In his paper entitled 'Riding the Donkey Backwards: Men as the Unacceptable Victims of Marital Violence', he claims that historically, abused men have been perceived as threats to the patriarchal order and, as a result, punished and shamed:

*In post-Renaissance France and England, society ridiculed and humiliated husbands thought to be battered and/or dominated by their wives (Steinmetz, 1977-78). In France, for instance, a "battered" husband was trotted around town riding a donkey backwards while holding its tail. In England, "abused" husbands were strapped to a cart and paraded around town, all the while subjected to the people's derision and contempt. (George, 1994: 1)*

George argues (1994:148-149) that, ironically, the same gender stereotypes on which patriarchy is based and which are so often referred to by the violence against women researchers when framing the problem of partner violence,

prevent those researchers and the wider public from recognising that men can be victims too. He (1994:137) criticises the fact that even though historical evidence like the above paragraph clearly suggests that a husband dominated or physically abused by his wife is not a new phenomenon, it is still not being taken seriously despite domestic abuse being so high on the agenda nowadays. He notes that (1994:137) 'the view of husband-as-victim of domestic violence' is still being dismissed and ridiculed and is 'more likely a subject of cartoons (Saenger, 1963) or of jokes about "hen-pecked" husbands (Wilkinson, 1981)' rather than being viewed as a legitimate area of research and a cause for concern. In fact, the mere attempt to study and measure the occurrence of male victimisation at the hands of their partners has attracted criticism from women's rights activists and those within the academia like Russell and Emerson Dobash, who argue that 'the problem of intimate partner violence is primarily one of men's violence to women partners and not the obverse' (Dobash and Dobash, 2004: 344). Indeed, as George (1994: 137-138) notes:

*raising the issue of husband-as-victim has spawned a heated controversy within academic circles pitting those who have reported such evidence (see Mills, 1990; Mold, 1990; Straus, Gelles, & Steinmetz, 1980) against those who scoff at such a possibility (see Pagelow, 1985; Pleck, Pleck, & Bart, 1977; Walker, 1989, 1990).*

Dempsey (2013:57) has even referred to this situation in the academia as an 'arid and at times acrid stand-off that has been reached in the violence against women versus gender symmetry wars'. As has been argued above, this gender 'war' over the victim status is damaging to both sides not only because it demonizes one group and patronises the other but also because of the fact that it prevents an objective and critical discussion that considers the issue in its full complexity and does not create a hierarchy of victims, as Cook (2009:41) put it:

*The question of who is the 'most important' victim is a debate, however, that serves only to detract from providing effective and helpful services for both genders that must have as their goal changing behaviours. Through the hard work of the women's movement, things have changed for the better in many*

*areas for both genders and for battered women in particular. Equality, not victimology, should remain the hallmark of this movement. Ignoring or dismissing the very real needs of the male subjected to domestic abuse contributes to a cycle of family abuse for the next generation.*

The aim of this paper is not to take sides in that debate but to show how defining a problem by certain groups can exclude others and may lead to a conflict and a struggle for recognition. In order, therefore, to have a constructive debate that aims to uncover the whole picture of the problem of domestic abuse we must not only include the voices of those who have too often been ignored like heterosexual men and those from the LGBT community but we must also look at the reasons for their exclusion, that is the influence of ideology and the wider political and social forces on the way this problem is being theorised and discussed. Straus & Gelles (1986: 472) recognise the power of claims making and lobbying when it comes to defining and framing social problems when they note that ‘violence by wives has not been an object of public concern’ and that ‘there has been no publicity, and no funds have been invested in ameliorating this problem because it has not been defined as a problem’.

Indeed, as Joel Best (2013: 7-8) argues, the only thing that unites such a wide variety of issues considered to be social problems, from global warming that affects us all to suicide that is something extremely personal, is the fact that they have been defined as such, in other words, they all have been socially constructed as causes for public concern. After all, it has not always been the case for domestic abuse to be considered such a pressing issue, or an issue at all. That is why we shall now turn to Best’s theory of social problem construction and apply it to domestic abuse in an attempt to examine the influence of ideology and pressure groups on policy and practice.

## 5 Social Constructionism

### 5.1 Definition

*[W]hat a social problem becomes greatly depends upon how it is conceptualized and defined. In their social existence, social problems are a series of claims. (Frawley, 2016:45)*

There is currently no specific statutory offence of 'domestic abuse' in Scots law, nor a statutory definition of what amounts to domestic abuse. There is, however, an official definition used by the Scottish Government which was first formulated in the then Scottish Executive's Strategy to Address Domestic Abuse, is states that:

*Domestic abuse (as gender-based abuse), can be perpetrated by partners or ex-partners and can include physical abuse (assault and physical attack involving a range of behaviour), sexual abuse (acts which degrade and humiliate women and are perpetrated against their will, including rape) and mental and emotional abuse (such as threats, verbal abuse, racial abuse, withholding money and other types of controlling behaviour such as isolation from family or friends). (Scottish Executive 2003, page 3)*

There is also a second, nationally agreed definition used by Police Scotland and the Crown Office and Procurator Fiscal Service that can be found in their published Joint Protocol entitled 'In partnership challenging domestic abuse'. For the purpose of facilitating investigation and prosecution of acts that may constitute domestic abuse, they define it as:

*Any form of physical, sexual or mental and emotional abuse which might amount to criminal conduct and which takes place within the context of a relationship. The relationship will be between partners (married, cohabiting, civil partnership or otherwise) or ex-partners. The abuse can be committed in the home or elsewhere.*

The difference between these two definitions is that the first one is openly gender-based, that is, it conflates domestic abuse with violence against women, and the other is gender neutral which is confirmed by the statement that follows the Police and COPFS' definition:

*While available evidence suggests that the most prevalent instances of domestic abuse are male abuse towards women, this definition acknowledges and includes female abuse towards men and abuse between partners or ex-partners in same-sex relationships.*

What is also worth noting about the above statement, however, is that while its purpose is clearly to confirm the inclusiveness of the definition it is, at the same time, an acknowledgment of the gendered dimension of the issue as if the Police felt obliged to make that qualification. Thus, even when it comes to the definition of the problem, the issue is far from settled and we can see the influence of the women's group on the way it is being constructed. This influence is also evidenced in the fact that the plans to create a specific criminal offence of domestic abuse are a response to the *Equally Safe – Scotland's strategy for preventing and eradicating violence against women and girls (2014)* – a strategy that was developed in association with women's organisations like Scottish Women's Aid and Rape Crisis Scotland and which is based on the understanding of there being a patriarchal society. Women's organisations were also the dominant voice in the government's consultation on the draft offence of domestic abuse<sup>38</sup>, the consultation paper states that:

*A number of respondents identified a range of core principles that should be applied when developing any legislation. These included that it should be:*

- gender-based in line with the Scottish Government's commitment to preventing and eradicating violence against women and girls; and*
- take account of the psychological harm caused by the abusive behaviour, including on children or young people. (Scottish Government 2015a, page 2)*

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<sup>38</sup> <http://www.gov.scot/Publications/2015/10/7350/9>



The names that frequently appear in those and other governmental publications are the names of those scholars who are leading voices from the so called gender asymmetry side of the debate like Professor Sylvia Walby, Professor Evan Stark on whose concept of 'coercive control' the proposed offence would be based, or Clare Connelly who wrote *Handling Domestic Abuse Cases - A Toolkit to Aid the Development of Specialist Approaches to Cases of Domestic Abuse* and who drafted *Domestic Abuse (Scotland) Act 2011* on behalf of Rhoda Grant MSP – herself a member of a cross-party parliamentary group *Men's Violence Against Women And Children* in which many women's organisations are involved<sup>39</sup>. Indeed, organisations like Women's aid are a powerful group, they are what Best (2013) calls 'insider claimsmakers' who, after years of campaigning for the problem of domestic abuse to be placed high on the public agenda, have become a well-established interest group with ties to policymakers and the ability to influence their decisions. They have claimed ownership of this issue and have become the go-to experts for politicians, media and various public bodies alike with their National Training Centre working closely with the Police, Health, Local Authorities and Schools by providing training and expertise on domestic abuse<sup>40</sup>. Given the fact, Dempsey (2013:56) argues, that the problem of violence at home gained widespread attention through the activism of feminist individuals and organisations who exposed the plight of battered wives, it is understandable that the main focus has been on violence against women; it does not mean, however, that it should be treated like a zero-sum game in which an acknowledgment of the complexity of the problem of violence at home and the inclusion of male victims is seen as a threat or negation of female victimisation. As he put it:

*Attending to the needs of others who are impacted by domestic abuse, including heterosexual men, need not be seen as taking anything away from the efforts of feminists to raise the issue of "wife battering". Yet, in the face of substantial evidence of violence against men in mixed-sex relationships the*

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<sup>39</sup> <http://www.parliament.scot/msps/97820.aspx>

<sup>40</sup> <https://www.womensaid.org.uk/what-we-do/training/>

*response of many feminist academics has not only been to ignore the needs of men and their children but to seek to explain the abuse that heterosexual men (and men and women in same-sex relationships) experience as fundamentally different to heterosexual women's experience of abuse and reassert the claim that domestic abuse as properly understood is solely, or at least overwhelmingly, only that which is experienced by women from male partners. (2013:56)*

Erin Pizzey herself, the person who is said to have opened the very first refuge for battered wives in Europe in 1971 and who has devoted her life to the issue of violence in the family, met with opposition and even hostility from many feminists when soon after establishing Chiswick Women's Aid<sup>41</sup> she started advocating for the needs and rights of abused men to be recognised too<sup>42</sup>.

Yet, women's groups are often the only organisations to be consulted by policymakers and the media and their definition of the problem of domestic abuse as a 'by product of patriarchy' seems to be treated like a dogma despite contradictory data (Dutton and Nicholls, 2005:681). This situation arguably leads to the exclusion of other voices in the debate and may result in ill-advised policies based on ideology rather than facts. Adopting a constructionist approach to understanding domestic abuse and analysing it through the prism of what Best calls the 'social problems process' allows us to critically examine the claims made by those groups.

## **5.2 Rhetorical Recipe for a Successful Claim**

Best (2013) argues that the important thing to take into account when studying social problems is that there is a competition in the social problems marketplace and that for claims to be effective and to win the attention of the press, the public and the policy makers, the rhetoric employed to frame the problem is often melodramatic and the 'typifying examples' used, rather than

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<sup>41</sup> Now a national charity 'Refuge'

<sup>42</sup> See 'Prone to Violence' Pizzey, 1982 and 'Women or Men – Who Are the Victims?', Pizzey et al. 2000

being descriptions of a typical representation of the troubling conditions are instead 'extreme, dramatic, disturbing, memorable cases' (2013:32). No fewer than twenty-nine such shocking and abominable cases of women kicked, stabbed and killed by their husbands were used by Frances Power Cobbe in her article entitled *Wife Torture in England* published in 1878 in *Contemporary Review*, an article that is considered instrumental in the passing of the 1878 Matrimonial Causes Act which enabled domestic violence to be used as grounds for legal separation. The dramatic naming of the problem by Cobbe as 'wife torture' was characterised by Hamilton (2006:89) 'as Cobbe's feminist appropriation of the humanitarian narrative in an attempt to represent the beaten woman in and to 19th-century society'. This, together with employing the 'narrative of sensation' was Cobbe's strategy to force the Victorian reader to pay attention to the problem of violated female bodies and to strengthen her argument for legal reform (Hamilton, 2006: 89-90). A similar strategy was used by Erin Pizzey almost a hundred years later when she published *Scream Quietly or the Neighbours Will Hear* in 1974 in which she included detailed accounts of the abuse the women who stayed at her refuge experienced. Today's campaigns and calls for action are also driven by extreme examples of domestic violence like the case of Clare Wood who was strangled and set on fire by her ex-partner and after whom the new Domestic Violence Disclosure Scheme has been named the 'Clare's law'. While there is no denying that many women in the UK are brutally assaulted and even murdered by their partners or ex-partners every year, most domestic abuse, however, is not fatal, nor does it involve serious physical harm. According to COPFS statistics for Scotland for 2014 – 2015<sup>43</sup>, of all the cases brought to court that had a domestic abuse aggravator attached to them, the biggest group, roughly 40%, were 'Breach of the Peace etc.' charges while homicide constituted 0.016% with a total of 5 cases. Yet the language commonly used to talk about domestic abuse in the media or academic writing on the subject is full of dramatic terms like 'domestic violence survivors', or 'intimate terrorism' (Johnson, 2006). The reason for that, according to Best, is that:

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<sup>43</sup><http://www.crownoffice.gov.uk/images/Documents/Statistics/Domestic%20abuse%20charges%20reported%202014-15.pdf>

*claimsmakers try to elicit emotional reactions, such as horror or sympathy, to get people to share their concerns, and of course much media coverage encourages the audience to feel outrage or compassion. (2013:26)*

Even the police seem to have given in to this tendency to use extreme examples and melodramatic narrative when it comes to depicting violence at home. As part of their #itswhatwedo campaign, the Scottish Police Federation has released a short video<sup>44</sup> that apparently aims to depict the work the police do in protecting the victims of domestic abuse, the film, however, looks more like a thriller movie than a representation of real life, daily interventions. It starts with two police officers talking to a concerned neighbour who called them because she was alarmed by the shouting and noises coming from the house next door, they go in and soon after one has his throat cut with cold blood by a man with a face of a psychopath and the other police officer, a female, is left to face the offender alone. The film ends with a dramatic close-up of her scared face and the viewer learns that her name is Maggie and that she is a divorced mom of two. While a possible, hypothetical scenario, it does not reflect reality – in Scotland, the overwhelming majority of all police officers who have died on duty were victims of unfortunate accidents. Since 2000, not a single death listed on the Police Roll of Honour Trust's website<sup>45</sup> was due to a police officer being attacked and killed during police intervention in relation to any crime, let alone domestic abuse, the causes mentioned were either road traffic and air accidents or falls and heart attacks. Police work is already widely regarded as risky and often dangerous by the public and using an exaggerated and highly emotional representation of policing domestic abuse seems unnecessary, especially when it could be argued that it contributes to the distortion of the wider picture of the problem and, in this particular case, to further demonisation of men.

Apart from disturbing typifying examples and names, Best (2013: 33) argues that the formula for the most convincing rhetoric aimed at creating an

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<sup>44</sup> <http://www.spf.org.uk/2014/03/helping-victims-of-domestic-abuse-its-what-we-do/>

<sup>45</sup> <http://www.policememorial.org.uk/index.php?page=policy-scotland>

impression of a troubling condition that is out of control and thus needs urgent intervention, also includes a 'big number'. Indeed, the statistics used in relation to domestic abuse and violence against women in general are likely the most repeated ones in the media - who has not heard the claim that at least 1 in 4<sup>46</sup> or 1 in 5<sup>47</sup> women will experience domestic violence in their lifetime. The problem with those big numbers commonly used by social problems claimsmakers is that they are often rough estimates or educated guesses (Best, 2013: 33) and that they are rarely scrutinised. Cook (2009: 125) argues that to a large extent the media is to blame for spreading and popularising claims that have not been thoroughly examined, as he put it:

*It is much easier to accept seemingly 'official' pronouncements as fact, and get the story out quickly, than to delve into the background of those 'facts'. Once a 'statistic' gets accepted by one reporter, other reporters tend to accept it as well. These statements then can take on a life of their own and, regardless of the source, when repeated often enough become accepted as credible fact.*

Cook (2009: 125-130) provides a number of examples of cases in which such a failure to exercise adequate journalistic scrutiny or critical thinking on the part of the media and politicians alike led to the promotion of 'facts' that were simply false or gross extrapolations removed from a specific context. One such example was a statistic frequently used by women's groups and the Canadian press that one in two disabled women has been physically or sexually abused at some point in her life. This statistic was cited in the Canadian House of Commons by an MP arguing in support of domestic violence legislation. When David Lees from *Toronto Life* decided to examine this claim, he discovered that its source was a questionnaire issued at a conference organised by the Disabled Women's Network (DAWN) who are funded by the federal Women's Program. It was completed by a group of thirty disabled women who had signed up for the conference with the knowledge of the issues to be discussed. As Cook (2009:126) points out, this small, self-selected group is hardly a

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<sup>46</sup> <http://www.refuge.org.uk/get-help-now/what-is-domestic-violence/domestic-violence-the-facts/>

<sup>47</sup> <http://www.whiteribbonScotland.org.uk/node/91>

representative sample of all disabled women. What is even more troubling, is the fact that the statistic used by the Canadian MP Edna Anderson that 40% of disabled women had been victims of sexual or physical assault as adults was apparently arrived at by manipulating the results of the questionnaire and adding 5 of those 30 women who had not answered this question to the 7 who had answered it positively. A similar approach was used by Evan Stark and Anne Flitcraft (1985) in their study on leading causes of injury to women. Their conclusion that domestic violence sends more women to emergency rooms than car accidents, muggings and rapes combined was reached by examining medical records of those women who reported injury and assuming that every record which did not state that an injury was caused by a stranger was a case of domestic abuse. As Cook (2009:128) explains, 'they classified the injury total into four types: positive, probable, suggestive, or negative' and then apparently combined the first three 'to reach a total that was greater than the other combined causes of injury.' According to Cook (2009:128), even Stark himself admitted that the results are not conclusive as there may be other forms of injury that have been unexamined. This, however, did not prevent the claim that 'domestic violence is the leading cause of injury to women' from being widely repeated by those in authority (Cook, 2009:128). It featured, for instance, on the U.S. Department of Health and Human Services website for 8 years until HHS finally responded to letters of criticism and inquiries and eventually removed the statement from their website. In their response, they have admitted that the statement that it is the *main* cause was incorrect but insisted that it is *one* of the leading causes. Cook (2009: 129) argues that even this claim is not true and cites studies like the U.S Justice Department Survey of injury-related visits to emergency rooms which found that all violence accounts for only 3% of such visits and domestic violence for 1% which means that in total, domestic violence is responsible for less than 0.3% of trips to ER. Apart from methodological issues as well as instances when the statistics may be misused in order to fit a specific political agenda, there are other things that have to be taken into account while examining credibility of certain claims. The ever-expanding definition of domestic abuse discussed earlier, as well as new legislation and a tougher, target oriented, policing approach, may drive up numbers considerably, giving the impression that the problem is getting worse. Thus, while official

statistics show that the offences with a charge proved with a domestic abuse aggravator have been on the rise since 2010-11, they also show that the 'breach of the peace' category accounted for two thirds of that increase with the offences of 'threatening or abusive behaviour' and stalking constituting a vast majority (96% in 2014/15) of offences in that bracket<sup>48</sup>. Both stalking and 'threatening or abusive behaviour' are new statutory crimes created by the *Criminal Justice and Licensing (Scotland) Act 2010* with the latter offence enabling the prosecution of acts, verbal or physical, committed in private by eliminating the requirement for a public element necessary for the common law crime of Breach of the Peace. Thus, by criminalising behaviour capable of causing fear or alarm to a single person only, the police powers have been enormously extended and, as the statistics show, it is the most common domestic abuse related charge. It is within this wider context, therefore, that any official statistics on domestic abuse in Scotland should be interpreted and that is why the *Criminal Proceedings in Scotland, 2014-15* statistical bulletin includes the following warning against misinterpreting the numbers:

*Elsewhere in this publication, increases in convictions in 2014-15 can be seen for the most common offences related to domestic abuse. This is of particular note for the breach of the peace category (...) The increase may be reflective of a strengthened emphasis on tackling domestic abuse in Scotland by both Police Scotland and the COPFS. Please note that the increase does not necessarily mean that domestic abuse is occurring at a greater level than in previous years but may be due, in part, to improvements in the recording of domestic abuse cases on the CHS. (Scottish Government 2016a: 31)*

In comparison, the *2014/15 Scottish Crime and Justice Survey on Partner Abuse*, a source considered to be a better reflection of the scale of the problem than Police statistics, did not find an increase in the risk of abuse in the 12-month period between the 2012/13 and 2014/15 survey sweeps. The percentage of respondents who had experienced abuse in the preceding 12 months was 3% and 2.9% respectively for those years (the risk of abuse was

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<sup>48</sup> <http://www.gov.scot/Resource/0049/00494474.pdf>

similar for both women and men). It is worth mentioning that of those 2.9% classified as victims of domestic abuse in the survey for 2014/15, only 'around a third (32.5%) viewed their experiences of physical abuse (in the last 12 months) as a crime', and, even fewer (17.9%) 'viewed their experiences of psychological abuse as a crime'. In fact, the most commonly reported form of abuse for both sexes was the partner behaving in 'jealous or controlling' way and the majority of men and women experienced just one incident of partner abuse in the last year<sup>49</sup>. When the statistics are examined more closely, therefore, and more critically, we get a more balanced and a more nuanced view of the problem. It is a sensitive issue and no one wants to minimise or deny the experiences of many women and indeed men who have been victims of domestic abuse but as Christina Hoff Sommers (2014, para 1) put it, 'if we're genuinely committed to improving the circumstances of women, we need to get the facts straight'<sup>50</sup>, and a sensationalised and ideologically driven narrative that tends to disregard the view of those very people those claimsmakers want to protect by arbitrarily placing them in the category of victims of abuse, abuse that again is largely defined by those groups themselves and subject to what Best calls 'domain expansion', i.e. the inclusion of more and more behaviours that they would classify as abusive, distorts the wider picture rather than clarify it. Even the leading scholars from the gender asymmetry camp like Russell P. Dobash and R. Emerson Dobash find it problematic to consider certain non-physical acts as comparable to physical violence. That is why in their study on intimate partner violence reported by couples they have clearly distinguished between the two:

*Intimidating and coercive 'acts' are measured and/or assessed separately and reported separately from physical/sexual 'acts', in order that they are not conflated. It should be stressed that coercive and intimidating acts may have important and negative consequences for victims but, as discussed earlier, it is important that they are not collapsed into one category and referred to as though there is no difference between them. (Dobash and Dobash 2004:334)*

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<sup>49</sup> <http://www.gov.scot/Resource/0050/00500328.pdf>

<sup>50</sup> <http://time.com/3222543/wage-pay-gap-myth-feminism/>



Yet, that is exactly what many commentators and researchers on domestic abuse are doing now and their views influence the new policies and laws discussed in this paper. To analyse this ‘domain expansion’ that aims to criminalise non-physical acts that have not been previously considered to be illegal, we should again look at it through the prism of social constructionism and the dynamics of effective claimsmaking.

### 5.3 Is Physical Violence Passé?

*People need to keep an issue fresh in order to warrant further coverage, they need to make a compelling case for continued attention, for doing something about the problem. (Frawley, 2016:54)*

We have seen that the rhetoric from the past utilised extreme examples of physical abuse in order to draw public and policymakers’ attention to the problem of violence at home, while this is still the case today, the focus has shifted onto other aspects of abuse, namely its psychological and emotional dimension and consequences. In terms of the representation of this issue in the media, nowhere has this shift been more visible than in the BBC Radio 4’s show the Archers and their two-and-a-half-year long storyline on the emotional abuse to which Helen Titchener was subjected by her domineering husband Rob. The controversial story, developed with the aid of Women’s Aid and Refuge who advised the BBC on the plotline, has been praised for raising public awareness about the more complex and often hidden side of domestic abuse by ‘avoiding the standard depiction of abuse as daily physical violence’ and centering instead on Rob’s systematic undermining of Helen’s personality<sup>51</sup>. This change in emphasis can arguably be seen as an attempt of the women’s groups to retain the ownership of this issue in the face of a growing criticism of their gendered analysis. Importantly, even though historically the rhetorical tools used by the claimsmakers in their campaigns on this difficult issue have been similar, the claims as to the origins of the problem have differed, with Cobbe’s

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<sup>51</sup> <http://www.bbc.co.uk/news/magazine-35961057>

still largely 'a class problem' analysis similar to that of John Stuart Mill, and Pizzey's focus on the troubled upbringing, history of previous violence and limited services and legal options for women to escape violent relationships. Nowadays the explanation is almost exclusively the patriarchal structure that is said to result in the domination and subordination of women by men and any attempt to discuss other causes is seen as finding excuses for the perpetrators. That is exactly why the definitions and the way a problem is theorised - the rhetoric, grounds and warrants used (Best, 2013: 30-40) - are important because they determine the solution to that problem and the course of action considered necessary. What is problematic about the gendered analysis of domestic abuse is the fact that it tends to ignore other voices that say that for instance personality disorders play a major part (Dutton, 2006) or growing up in violent families (Pizzey, 1982) or that the aetiology is no different to other crimes (Felson, 2010) and, as a result, those aspects of the problem remain unaddressed. Explaining domestic abuse solely in terms of the concept of patriarchy is an example of what Best (2013:297) refers to as 'theorization', i.e.:

*The presentation of claims that emphasize general, abstract principles and arguments. (...) Theorization abstracts and simplifies. In the case of social problems claims, theorization smooths out the argument. It reduces specifics of limited, local relevance and rephrases the claim in broader, more general terms that make it more widely acceptable. The theoretical becomes significant; the practical, less important. Thus a theorized claim is more easily spread (...).*

But domestic abuse, like any social problem, is a complex issue that may have different causes and factors at play and the context of unequal relations between the genders, while an important prism through which this issue has traditionally been analysed, possesses less explanatory power nowadays, at least in western societies. It is difficult to claim today, for instance, that wife beating or violence against women in general is socially accepted, when studies such as that of Richard Felson (2009) find that it is the most condemned form of violence and the most likely to be reported to the police. With the gains women have made in the workplace and educational attainment in the last four decades together with legal reforms such as criminalisation of marital rape it is also

difficult to deny that the situation of women in the west has improved enormously. On the education front, women are actually performing better than men<sup>52</sup> and it is of great significance to the fight against domestic abuse as research shows that educated women are more likely to leave violent marriages (Rusbult & Martz, 1995; Kreager et al. 2013) and that education is negatively related to violence in marriage (Sorenson et al. 1996). Given all that, and in light of the findings from studies on male, lesbian and gay victims that challenge the theory that domestic abuse is what men do to women, the centering on male control and domination seems like an inevitable strategy if one wants to retain the importance of the concept of patriarchy in the debate on domestic abuse. Indeed, as Anderson put it when discussing Evan Starks work on coercive control:

*Stark's hope for this book is that the theory of coercive control will reenergize the "stalled domestic violence revolution" by providing us with a conceptual model to understand why coercive control is gendered. (2009:1452)*

It does seem therefore, that the emphasis on controlling and coercive behaviour is a response to the criticism of the patriarchal society theory and the discovered gendered symmetry in terms of the use of violence within relationships. This re-framing of the issue to retain the focus on women is crucial as it enables the women's movement to continue claiming ownership of it and to protect this concept of an exclusive victim on which their ideology is based. And when we have a policy based on ideology rather than facts, we end up with a situation in which police officers, charged with implementing that policy, have to apply extremely abstract theoretical concepts like 'intimate terrorism' to messy everyday situations that do not fit neatly into arbitrarily imposed categories. Indeed, a crucial stage in Best's (2013) 'social problems process' is what he calls 'social problems work', that is the work of those who are tasked with implementing the new policies that were a result of a successful claims making campaign. Those people too are involved in the construction and

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<sup>52</sup> <http://www.independent.co.uk/student/into-university/young-white-men-not-performing-as-well-as-women-in-higher-education-says-hepi-report-a7024241.html>

reconstruction of the meaning of the troubling condition every time they decide that a certain behaviour or event should or should not be treated as a specific instance of that condition and their decisions have real consequences for the lives of the people involved (Best, 2013: 221-222). They have a difficult task because as Best put it:

*Social problems workers find themselves squeezed between great expectations and mundane reality. The expectations travel from the top down; they are imposed on social problems workers by the larger society, by policymakers, and particularly by those who directly supervise what social problems workers do. (2013: 223)*

That is why the next section is dedicated to those police officers who have to enforce the new policies by constructing certain behaviours as crimes and certain relationship as abusive, and who are tasked with the impossible goal of 'eradicating' domestic abuse set out by the Scottish Government in its *Equally Safe Strategy*. Given the importance of their work and the criticism of the current approach to policing domestic abuse presented above, it is important they are consulted on whether they really think that Scotland has got it right on domestic abuse.

## 6 Interviews

### 6.1 Past Criticism of the Police

Many feminist researchers in the 70s and 80s pointed out and criticised the failure of the Criminal Justice System in the UK to deal effectively with the perpetrators of domestic abuse, especially the failure of the police to make an arrest when they are called to domestic incidents (Dobash and Dobash, 1979, Pagelow, 1981, Edwards, 1989). Police officers were seen as having too much discretion and their choices were thought to be influenced by police culture that was seen as conservative and authoritarian, as a result, feminist commentators started calling for policy changes that would limit that discretion and improve operational policing, and the belief was that those reforms would benefit the victims of domestic abuse (Hoyle, 1996). As Edwards (1989:87) put it when arguing for a policy directive on marital violence in the UK almost three decades ago, *[p]olicing in the absence of policy ... facilitates the making of individual judgements, often based on erroneous stereotypes*. According to Edwards (1989), those negative stereotypes and attitudes towards domestic abuse and the female victims were a result of a masculine police culture that is influenced by patriarchy and that does not consider 'domestics' a 'real' police work. Indeed, this criticism that police officers prefer the more exciting 'crime fighting' aspect of policing as opposed to the more routine and time consuming 'service work' like policing domestic abuse has been a common one; Loftus (2009:9) summarises the main points of this criticism:

*The obsession with excitement and action means that some aspects of routine policing are considered less important. In the police mind, incidents which fail to conform to the values of 'real' police work epitomize 'bullshit' (Van Maanen 1978b) and 'rubbish' (Holdaway 1983). (...) there has been no shortage of evidence that officers regard being called to domestic violence incidents as rubbish work. Although officers tend to celebrate the exhilarating aspects of their role, police work is mainly uneventful and tedious (Manning 1977). Nevertheless, the craving for action and excitement is pervasive and*

*undermines change initiatives. As Marks (2005) points out, officers who delight in the thrills of action and chase are disinclined to undertake less adventurous forms of police work.*

## **6.2 Present Practice and Zero Tolerance Approach**

As a result of the aforementioned criticism and calls for change, the approach to policing domestic abuse in Scotland has changed significantly and professional discretion has been greatly limited. Indeed, the interviews have confirmed the existence of a 'pro-arrest' or 'zero tolerance' policy within the police when it comes to domestic abuse - all of those interviewed confirmed the thesis that there is indeed pressure on the front-line police officers to detain or arrest someone every time they attend a domestic intervention, and that this pressure is coming from above, from the senior management. As one of the officers put it:

*"Police officers don't have discretion anymore (...) certainly domestic is taken right out of our hands."*

(Female, 6 years of service)

As another one explained:

*"The first question in a domestic incident is 'why wasn't he detained?' It's all sort of everybody is so scared of getting into trouble or getting criticised from the higher ranks. (...) There is so much fear about being criticised. Firstly, by the front-line officers, then by the sergeants and then by the inspectors as it moves up (...) our superiors are so scared of criticism. We'll get hung out to dry or I won't get promoted. It's this sort of approach of fear dare I say it."*

(Male, over 10 years of service)

This reference to what seems to be a 'culture of fear' (a term used by one of the interviewees) within the Police in relation to the use of discretion in cases of domestic abuse was made several times throughout the interviews. Another

police officer, with over 30 years of experience, made a similar remark that illustrates how real that fear seems to be:

*“People are frightened to make decisions (...) it is this fear of being criticised and having a black mark against their record, or being viewed as making the wrong decision. (...) I would go as far to say there’s a vast number of sergeants that I had any dealings within the last 5 – 10 years, they’re not much far behind inspectors, that I know would have been having palpitations and running for the panic attack if you asked them to make such a decision.”*

(Male, over 30 years of service, recently retired)

### **6.3 Suspects’ Rights and Due Process**

It appears that one consequence of this fear and what one police officer called ‘ass covering’ by the Police may be unnecessary detention in cases that would not have previously warranted this measure. In fact, as one of the police officers admitted, it may be quite common:

*“It happens a lot. Like I said from many minor incidents there’s time when we have people who should not be in our cells. Decent people or vulnerable people but by the letter of the law they must be detained, charged and what have you. It just shouldn’t be happening.”*

(Male, over 10 years of service)

Indeed, as Loftus (2009:14) argue, due the preoccupation of the police management with the image of the police as professional and efficient, rank and file officers are under a lot of pressure to ‘conform to organizational directives’ and ‘[a] predisposition to ‘cover your arse’ consequently ensues and is a deeply ingrained feature of policing culture (Van Maanen 1978*b*; Chan *et al* 2003).’

The interviews seem to confirm the findings of some scholars who suggest that often, in an attempt to avoid liability, the police officers may be encouraged to always make an arrest, even when it sometimes means arresting both

parties, and then leave it to the prosecution or the judge to 'sort it out' (Hirschel et al., 2008; Cramer, 2005; Buzawa & Buzawa, 2003; Bliss et al., 2006). As one of the police officers illustrated below, this appears to be a recurrent scenario:

*"What you find is they go to court the next day. If that was a Friday night, they go to court on the Monday morning. They're in the police cell all weekend. Say it was a bank holiday on the Monday, they usually have a Saturday court to try and clear the backlog. But if that was then a Saturday afternoon they'll be there Saturday all day, all day Sunday, all day Monday and they wouldn't go to court until the Tuesday depending on the scenario. A lot of them in cases like that is the fiscal then gets the custody report (...) The fiscal instructs they're not taking any action and the person is deliberated from the court. It can take from the police cell to the court cell and then deliberated on the fiscal's operation. So there's nothing. There's no conviction, there's no charges. They have been arrested, charged and kept in custody but everything is dropped. "*

(Male, over 30 years of service, recently retired)

Another police officer also expressed a concern about the possibility that some people may be put in cells without there being sufficient evidence or justification for that:

*"I think it's dangerous detaining somebody who's going to turn out to be an unlawful detention or keeping somebody in court when you don't have enough evidence. It's pretty much wrongful arrest I suppose."*

(Male, 16 years of service)

Depriving someone of their liberty is an extreme measure and, as one police officer stated, it seems that things have been turned on their heads when it comes to domestic incidents:

*"It used to be the other way about. We had to explain why someone was detained or arrested now it's why wasn't somebody detained or arrested. There's an assumption that somebody will be detained. Which isn't always the case obviously."* (Male, over 10 years of service)



## 6.4 The (In)effectiveness of Mandatory and Pro-Arrest Policies

Related to the points raised above is what many see as an unintended consequence of the mandatory and pro-arrest policies, namely the increase in the number of women being arrested for domestic abuse. This increase is attributed to a large extent to the rise in what is called a 'dual arrest' where both parties are arrested due to the responding officer's inability to determine who is at fault (Hirschel et al., 2008; Miller et al., 2011; DeLeon-Granados et al.; 2006). This trend has been confirmed by a recent pilot study in Scotland which found a 'substantial' number of dual-report incidents recorded over a 1-year period. (Brooks and Kyle, 2015) The concern is that those arrests may criminalise the innocent party and increase the perceived risk of contacting the police, reducing, as a result, the rates of reporting (Novisky and Peralta, 2015: 67). Indeed, a common criticism of mandatory arrest policies is that they 'have the potential to create uncooperative or hostile relationships between law enforcement officers and IPV<sup>53</sup> victims' (Novisky and Peralta, 2015: 67) because they disempower victims by denying them the ability to choose what they think is the right solution to their specific situation (see Cramer, 2005; Strauss, 1993). What is more, studies in the US found that women of colour may be particularly reluctant to contact the police in districts where there are mandatory arrest policies due to the perceived racism of the criminal justice system and potential discriminatory treatment to which their partner may be subjected (see Bent-Goodley, 2001; Richie, 1996). The potential for mandatory and pro-arrest policies to have those unintended consequences that seem to render those policies more harmful than beneficial to the victims is acknowledged by one of the interviewed police officers:

*"It's put a lot of people off contacting us. I can give you an example; a couple has an argument. The wife then wants the gentleman to leave we turn up. And normally we could say 'right sir is there somewhere you can go for the evening, and you can calm down until tomorrow?' Yes. Okay fine. Split them up simple resolution. Now it's 'oh so he's made you scared?' Yes. Right we'll have to*

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<sup>53</sup> Interpersonal Violence

*detain him. Take him down to HQ. He's detained for 12 hours. He's interviewed. He'll probably be charged and arrested and put to court for a very minimal event. The other party then feels guilty. I didn't want that to happen. But it's happened. So in the future they might be resistant to call the police. They don't want him arrested again they just want a bit of space. And I've found that out from quite a few people."*

(Male , over 10 years of service)

There is evidence, however, that suggest that not all women see mandatory arrest policies as disempowering - a study of a shelter population found that the majority of women in the shelter were actually supportive of those policies because they take the burden of responsibility away from the victims (Barata & Schneider, 2004). A similar view was expressed by an officer from a special Domestic Abuse Investigation Unit:

*"There's a whole lot of reasons why they may not want to make a complaint; fear, threats, losing their home, their children things like that you know. So we take that responsibility away from them and report the circumstances if there's sufficient evidence and investigate it as best we can."*

(Female, over 8 years of service)

It has to be noted however that results of shelter studies should not be generalised as they are politicised environments run according to the feminist ethos and their inhabitants are usually victims of the more severe cases of domestic abuse that constitute a small percentage of all cases. What is more, Hoyle (1996:112-113) notes that those feminist authors who criticise police response as inadequate argue so almost exclusively from the 'normative stance' focusing on police attitudes and culture while paying little attention to the wider 'structural socio-legal analysis' and the constraining force of criminal law and police force as an organisation. She adds that:

*These writers have also, in the main, failed to appreciate the role of the complainant in the police decision making process, assuming that the wishes of complainants and police officers are always in conflict. (Hoyle, 1996: 112-113)*

Indeed, Holey's (1996) Thames Valley study in which she interviewed women on their experiences with the police found that what the majority of women wanted from the police was 'immediate protection' and to many it did not matter whether this is achieved by arresting the man or temporarily moving him to another location as long as he is removed from the victim's home, some just wanted the police to calm the suspect down or warn him and even when an arrest was requested the victim often opposed prosecution. Holey (1996:246) also takes issue with the common critique of the so-called practice of 'criming down' with regards to domestic abuse incidents, namely the practice of charging someone with a lower classification crime like 'breach of the peace' rather than assault for instance:

*Criming down, like the failure to arrest in cases of domestic violence, has been explained by feminist researchers in terms of "undeserving victims" and cultural attitudes regarding the privacy of the home and the acceptability of certain behaviours (Smith, 1989). The majority of the breach of the peace arrests in the Thames Valley were not examples of the police underenforcing the law, but rather examples of the police engaging in law enforcement for 'social service' ends when, because of uncooperative victims or lack of evidence of an offence, they believed that they had little hope of achieving a prosecution.*

These findings seem to be supported by one interviewee when he admits to the instrumental use of criminal law in order to provide immediate protection to uncooperative victims:

*"I'm not saying it was right that people were locked on a breach of the peace just because it was a way of getting them out of the house. Sometimes we would turn up and a woman's standing with a black eye and we were what happened to you? Nothing I fell. Well we'd think well he's definitely coming with us no matter what. It was used as a mechanism for getting them out of the road." (Male, 30 years of service, now retired)*

## 6.5 Disproportionate Approach

Another, commonly voiced criticism by the interviewees was that the current approach is too inflexible, that this is a 'one-size-fits-all' policy, especially given the fact that, as many of them admitted, the majority of cases they deal with on a daily basis are not what they would consider serious cases, most of them would fall in the 'breach of the peace' category as borne out by the statistics presented above. As one, recently retired, officer explained:

*"I used to draw quite a lot of tut-tuts and weird looks at management meetings because I was always a great believer that with domestic violence, domestic abuse you could not factor one policy fits all. (...) I had the vulnerable person's database responsibility in my sub-divisional support role. I had to put out the reminders this updates need done, this is needing done to my counterparts. Which is quite interesting when you're doing it to your peer group but I saw quite a whole breadth of stuff coming across. Things like fighting over the remote control. The neighbour heard next door, she came in and she says yes we were arguing. He says we were arguing because I told her to shut up and give us the remote control. He was jailed because it was domestic abuse. She alleged it, he admitted it. Now is that justified? Of course the rules will say what happens if there's history? There is no history but should be risk assessed. If there's no history then surely that shouldn't warrant him being locked up, being taken to the police station and kept in custody for the rest of the day."*

(Male, over 30 years of service, recently retired)

In terms of the very serious cases, those involving serious bodily harm or threat to one's life, most of the interviewees estimated them to constitute about 5% of all incidents which suggests that the majority of police time is spent on dealing with those less serious or even minor incidents. Sherman and Strang (1996:5) argue against this approach of lumping most cases of domestic abuse together and treating them as the same, and emphasize the importance of a better classification that would enable a more targeted and a more effective police response:

*“Domestic violence” embraces everything from a shouting match to a shooting. This labeling process minimizes the significance of the most serious cases, and overstates the significance of the far more numerous cases without injury, or even without physical violence at all. This may lead police to do too little about the most serious cases because they are attempting to do too much about the least serious ones.*

Indeed, as one interviewee put it:

*“We tend not to deal a lot with the people who really need our help. It’s usually people who are just trying to get the better of another partner in an argument who will call us. Rather than people who are real victims.”*  
(Male, over 10 years of service)

The above statement suggests yet another problem with the current approach to domestic abuse, the problem of malicious allegations and the fact that those policies may be open to abuse by some people as confirmed by another police officer:

*“Some people do know that because it has a domestic tag, we have to be dealing with it to the most extreme. They know exactly what to say and what to do for us to go in and take someone away.”*  
(Female, 6 years of service)

One of the interviewees estimated the percentage of cases of false allegations he has dealt with to be around 10% which seems high and should be taken with caution because police officers, due to the nature of their work, may be overly sceptical and suspicious of the public as ‘[i]n defence of the inherent danger in police work, a primary feature of the working personality is suspiciousness towards people, places, and events’ (Loftus, 2009: 6). Regardless of the exact number, however, false allegations do happen and it is problematic that the current approach to policing domestic abuse seems to put more emphasis on results and increasing reporting rates than on due process.

While it is true that it may be difficult to prove false or malicious allegations, not holding people accountable if there is evidence may only encourage them to 'play the system'. As one police officer from the special Domestic Abuse Investigation Unit admitted:

*"Even if we do get evidence to prove it [false allegations], there's no penalty for that generally. They won't be charged with wasting police time or anything like that. That's generally the way because we don't want to discourage people from reporting domestic crime. So somebody who is tittering on the edge of reporting it and then they hear that somebody's been done for wasting police time and that the police aren't supportive and all that then that would be counterproductive. So people don't get charged with that."*

(Female, over 8 years of service)

Another challenge identified by the interviewed police officers was the amount of bureaucracy now involved when dealing with every domestic disturbance and, consequently, the problem of wasting limited resources. As one police officer explained:

*"From a sergeant's point of view or an inspector, if you've only got finite resources and you heard a car call going out to a domestic incident we're going to have 2 cops tied up for hours and hours doing paperwork. Dealing with the actual incident could be dealt with very quickly. But it's the follow on enquiries, updating crime reports, updates to cases case as it could be custody case. Then updating the vulnerable person's database and cross referencing. If you went to a call at midnight you would not finish until about 8 o'clock in the morning. Those 2 cops would be off the street for the rest of the shift. So domestic incidents became quite a bit off, not the actual domestic, the reasoning behind it, but the obvious distractions to it became a bit of a nightmare. People became really 'oh no, not again'."*

(Male, 30 years of service, now retired)

A similar criticism of the current resource-intensive approach to dealing with every domestic incidence was voiced by another police officer:

*“One domestic incident, even a minor one, can take up a full working day. It can’t continue like that as I’ve other things to do. There’s very few of us on the front line now. You have 6 cops on the team, 3 pairs and you have 3 domestic incidents in the first hour and there’s nobody left to deal with anything else that comes. That happened to my team last week. You have nobody to respond to anything for the rest of the day.”*

(Male, over 10 years of service)

## **6.6 The Vulnerable Public**

A related criticism is that of the way the previously mentioned Vulnerable Persons Register is being used, as one of the police officers believes, the requirement to add everyone to that register, regardless of the seriousness of the incidence, defeats its purpose. As she explained, in instances when there are counter allegations, both parties end up on that register as both, a perpetrator and as a victim which is not very useful. As she put it:

*“Everyone’s a vulnerable person. It’s almost at the point that anything we personally deal with has to go on the vulnerable person’s database. It’s just a database with everyone on it. The idea of it is a good idea but we’re just putting everyone on it.”*

(Female, 6 years of service)

The biggest concern is that while it was set up to help identify victims of repeat abuse, its indiscriminate application may be counterproductive:

*“Your genuine domestic victims are totally lost in this database. Everyone is considered a vulnerable person. Every tiny little incident is considered a domestic incident if it’s involving people that are in a relationship or who have been in a relationship. When that’s not necessarily the case. “*

## 6.7 Broad Definition and Domain Expansion

The interviewees identified another problem discussed here earlier, the problem of very inclusive definitions of domestic abuse and the net-widening effect of applying and interpreting the definition very broadly:

*“It doesn’t matter you could just be having an argument and it can result in the end being in the jail. So it’s massively intrusive on people’s lives definitely. “*

(Female, 6 years of service)

But a broad application also with regards to the definition of an intimate relationship, to the point, as she put it:

*“where it’s absolutely ridiculous if I’m being completely honest. The definition doesn’t say this but in terms of our bosses if you have sex with a person once, like a one-night stand, and a couple of years later and you get into an argument with that person in a pub that’s considered a domestic incident.”*

She provides another example:

*“I dealt with an incident a couple of years ago. It was not domestic in the slightest. This lad had been slagging someone on Facebook but slagging a whole load of females on Facebook who he just happened to have slept with one of them years previously and that had to be recorded as a domestic incident.”*

She also admitted that the definition is so broad as to include 13, 14-year-old children for instance which was confirmed by other officers.



## 6.8 Deviancy vs Purposeful Violence

Another important aspect of domestic abuse discussed in the interviews was the role alcohol usually plays in the incidents they attend, as one police officer explained it:

*“Alcohol for us is the main thing for most things. More than drugs alcohol is the biggest influence. If there wasn’t any alcohol, then we would have less to do. Something else would take its place I’m not being naive about it. But when it comes to domestics it’s a big alcohol thing. Most of it, a lot of domestic would be after people are back after having a night out. They go home and then it starts up when they get home because they’ve had a drink.”*

(Male, 18 years of service)

This view was confirmed but another officer from the Domestic Abuse Investigation Unit:

*“[a]lcohol is a big part in all the really serious cases all the way through to the minor cases. The minor cases are probably all arguments that have only happened because one or both parties are under the influence of alcohol. 90% probably involve alcohol. There’s a big difference between people who can’t get on because they’re maybe separating. Or they’re trying to get on with ex-partners as well. They’re arguing about children, custody and access to the children. There’s a difference between these arguments and what people get into. During my experience from people who go into relationships and immediately exert complete control over their victims. They don’t allow them to contact their family, their friends. They don’t allow them to go out.”*

(Male, 14 years of service)

The influence of alcohol is significant for two reasons. Firstly, it would confirm the findings of those who suggest that in this respect domestic abuse is no different to other types of crimes and types of violence and therefore have similar aetiology (Felson, 2010), a finding that does not support the patriarchal

analysis. Secondly, if the main goal of the current approach is prevention, then mandatory or pro-arrest policies should be reconsidered as research shows that those who are under the influence of alcohol or drugs when they assault their partners are more likely to use violence again regardless of whether they were previously arrested or not (see Felson, 2005).

## **6.9 The Symbolic Dimension - Virtue Signalling**

Some would argue, however, that while evaluating what works with regards to domestic abuse is important, what is equally or even more important is the retributive element of arrest as well as the fact that it sends a message that this kind of behaviour is not tolerated (see for instance Jordan, 2004).

Despite the fact that the police officers interviewed have been mostly critical of the new approach to policing domestic abuse, there was a general agreement among them that the thinking behind it is good and that in many respects it is a step in the right direction. As one officer summarised it:

*“It’s been a good change when we’re dealing with serious incidents yes but in terms of the non-serious incidents which make up most of our domestic type things, it’s been a disaster, an absolute disaster”.*

(Male, over 10 years of service)

They have also admitted that the approach is more robust now, more victim oriented and more uniform. Many also praised the work of the special domestic abuse units and the Domestic Abuse Task Force which can identify serious offenders and those victims most at risk. Indeed, as Hoyle (1996:198) argues, ‘shift-based reactive policing is not conducive to officers taking ownership of problems’ and having a dedicated domestic abuse unit certainly helps to address the need of the police to follow up on cases and provide extra support and information to the victims as what they deal with is rarely a one-off incident but rather an ongoing and complex problem.

The key seems to be, as with everything else, to strike the right balance. The police officers interviewed believe that in order to achieve that they have to be afforded some degree of discretion as every case is different and there has to be a nuanced, targeted approach. As one of them suggested, that would improve morale significantly:

*“If we could go back to having our judgement trusted it would help a lot. We wouldn’t go into a lot of the time as a domestic somebody needs to go to that. We’re like, we don’t really want to go to that. It would take a lot of that away, a lot of the dread with dealing with it. “*

(Male, over 10 years of service)

According to another police officer, the choice between a pro-arrest or mandatory system versus one that affords police officers more discretion should be an easy one:

*“Do we wish to live under a dictatorial legal system or one where there is the ability for those attending to base their decisions on experience, circumstances, evidence available? “*

(Male, 31 years of service, now retired)

## **6.10 The Challenges and Needs of Operational Policing**

While reforms were certainly needed, not least to give police officers more legal powers and guidance to be better equipped to deal with domestic abuse, creating an atmosphere where they are afraid to use their professional judgment or feel like it is not trusted may produce frustration and even hostility and thus influence the success of the reform. As mentioned earlier, ordinary police constables face a lot of pressure from the management to conform to organisational directives and to meet the often unrealistic targets while trying, at the same time, to solve complex issues in their daily contact with the public that do not translate easily into socially constructed definitions and outcome

indicators. As a result, they often feel isolated and misunderstood by both their own superiors and the people they serve. As Loftus (2009:13) put it:

*The most common complaint of the rank and file is that their superiors are detached from the 'sharp end' of operational policing. This is captured by Waddington (1999b: 231), who explains, 'from the perspective of the rank and file, senior ranks are divorced from reality, living in a comfortable and trouble-free existence on the upper floors of police headquarters'. This sense of betrayal by management reinforces a marked sense of solidarity among the rank and file and can subsequently thwart top-down reform initiatives.*

Loftus (2009:19) maintains that a top-down police reform designed to tighten the rules may produce conformity and influence behaviour but the risk is that the 'existing dispositions' will be left intact and what is needed is a 'more holistic approach', an approach, I would argue, that involves a dialogue and consultation with those on the front line of policing domestic abuse as well as an improved training provision as that was one of the things those interviewed thought they would benefit from.

## 7 Conclusion

*I believe that what the public wants from criminology is for us to use what we know to reduce the overall harm caused by crime and its control. (Carr, 2010:8, emphasis in original)*

This paper tried to examine the origin and consequences of a specific crime control strategy in Scotland, namely the use of pro-arrest policies with relation to domestic abuse incidents. The narrative evidence presented here confirmed the validity of some of the concerns raised in relation to the loss of police officers' discretion when dealing with domestic abuse cases and seems to confirm the findings of other studies on mandatory and presumptive arrest policies that suggest that those policies may be more harmful than beneficial. Of particular concern is the use of detention and arrest in cases where there is not enough evidence that a crime has been committed or in cases that may involve false allegations, as well as the potential for those policies to disempower victims and have the unintended effect of reducing reporting. The interviews also appear to substantiate the criticism that the application of a broad definition of domestic abuse leads to an intrusive policing of the private lives of an increasing number of individuals, even minors. Importantly, the net-widening effect of a broad definition of domestic abuse as well as an indiscriminate arrest policy result in system overload and, consequently, in the limited resources being directed away from the real victims of domestic abuse. What is more, the research on the effects of pro-arrest policies on reoffending conducted in the United State and briefly summarised in this paper does not support the existence of an overall preventative effect of those policies which constitutes yet another reason why they should be carefully considered and evaluated in Scotland.

In fact, this paper argues that it is the retributive and symbolic element of those policies that makes them appealing to policy makers who see the punitive approach to crime control as necessary in order to reassure the public that they increasingly see as vulnerable - as reflected in the ever-expanding Vulnerable

Persons Register. The value of this research derives from the fact that it uses social constructionism to highlight the influence of political pressure and the wider social and political trends in the West on the way this problem is being represented and approached. It critically evaluates claims and statistics often taken at face value in most analysis of domestic abuse which employ only the 'objectivist' position and argues that the facts are clouded, and often even distorted by radical feminist ideology which is based on the concept of an exclusive victim and an increasingly broad definition of abuse and vulnerability. Indeed, the influence of identity politics based on the victim persona in the West in general is central to understanding the success of women's groups' claims-making and the official response to domestic abuse. This response, rather than being proportionate, is intrusive and often even counterproductive, and is arguably a reflection of the changing role of politics and the police and their preoccupation with risk management and risk reduction at the expense of professional discretion and the rights of the suspects.

Crucially, by giving voice to those who are at the forefront of tackling domestic abuse and who are under pressure to implement the pro-arrest policy, this research poses a question about the effectiveness and desirability of an approach that is criticised by the police officers themselves. Undoubtedly, more research is needed in this area in order to carefully assess the effects of this approach in the Scottish context. Studies with bigger and more representative samples of police officers as well as those involving victims and the wider public should be conducted and, to strengthen the validity of the results, interviews could be complemented by participant observation as the ethnomethodological approach has a long tradition within police studies and would enable data comparison.

What is more, the over-reliance on the Criminal Justice System with regard to domestic abuse is problematic as it should be considered the last resort that can be avoided, or at least facilitated by, for instance, therapy or effective civil action. Indeed, a genuine victim-oriented approach should include governmental spending on legal aid, affordable housing and shelters but also increasing educational and employment opportunities for both men and women.

Unfortunately, the present focus on emotions and policing intimate aspects of interpersonal relationships precludes those most effective solutions, as Frowley (2016:34-35) puts it:

*The preferential treatment of the internal and interpersonal thus encourages shift in focus of conceptualizations of social problems from the material conditions of society to a preoccupation with how people think, feel, behave and their relationship to each other.*

Lastly, when the Criminal Justice System has to be resorted to, it should be remembered that, as David Thacher (2001) argues in his paper entitled *Policing is Not a Treatment: Alternatives to the Medical Model of Police Research*, Police is one of those institutions that are characterised by a high level of 'value pluralism' and all those values by which this institution is guided like crime prevention, retribution but also justice and due process should be taken into account and carefully balanced.

## **8 Appendices**

### **Appendix 1 - Masters' Dissertation Research: Participant Information Sheet**

You are being invited to take part in a research study as part of a student project. Before you decide it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Please ask if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part.

Thank you for reading this.

#### **Who will conduct the research?**

Katarzyna Prusak,  
School of Social and Health Sciences  
Abertay University, Bell Street, Dundee, Scotland, DD1 1HG.

#### **Title of the Research**

'Policing Domestic Abuse in Scotland – a social constructionist approach'.

#### **What is the aim of the research?**

My main aim is to learn to be a better researcher so that in future I will be able to do research that may contribute to explaining various other social phenomena. The main aim of the project is to get a clear understanding of changes in the policing of domestic abuse in Scotland through interviews with those involved in the Criminal Justice System. By so doing it is hoped that the research will help illustrate the transparent nature of policing in Scotland, and more importantly help to reinforce best practice in CJS.



**Why have I been chosen?**

You have been approached because you are a police officer and this project is concerned with the opinions of criminal justice practitioners who are charged with implementing new laws and policies that have been devised for dealing with domestic violence.

**What would I be asked to do if I took part?**

You will be asked to attend a one-to-one interview about your experiences in dealing with domestic violence cases. Your participation is entirely voluntary. You can withdraw at any time for any reason without explanation. You may omit any of the questions should you wish to do so. The discussion will be paced by you so the duration of the meeting is under your control. The session is estimated to take a maximum of 45 minutes and will be audio-recorded. You can choose where the interview will take place, it can be the university or at your premises.

**What will you do with the data?**

Your responses will be recorded and transcribed and the recording will be destroyed within 4 weeks of the interview. You will be sent a copy of the transcript so you can check your opinions are captured accurately. The notes from the interview are anonymous with respect to respondent.

The researcher is examining the opinions of police officers in relation to the changes in policing domestic violence in Scotland. She will attempt to establish whether the way this difficult area of criminality is constructed by politicians and various organisations matches the reality on the ground as experienced by criminal justice professionals.

The work will be written up as a Masters Thesis and presented to the University of Abertay reviewing panel. It is possible that some aspects of the project may be used in later publications.

**How is confidentiality maintained?**

All of the information you give will be anonymised so that those reading reports from the research will not know who has contributed to it, unless you explicitly agree that your name be made public. Nobody other than the researcher will have access to the

data, which will be saved securely on password-protected computers and stored securely for 10 years in accordance with the Data Protection Act 1998.

**What happens if I do not want to take part or if I change my mind?**

It is up to you to decide whether or not to take part. If you do decide to take part you will be given this information sheet to keep and be asked to sign a consent form. If you decide to take part you are still free to withdraw at any time without giving a reason and without detriment to yourself

**Who has reviewed the project?**

The study has been reviewed and received a favourable opinion from the University of Abertay Ethics Committee.

**What if there is a problem?**

Any complaint or concern about any aspect of the way you have been dealt with during the course of the study will be addressed; please contact Dr Stuart Waiton (0)1382 308767; s.waiton@abertay.ac.uk).

**Contact for further information**

Katarzyna Prusak  
School of Social and Health Sciences  
University of Abertay Dundee  
0800903@live.abertay.ac.uk

## Appendix 2 – Informed Consent Form

**Full title of Project:** 'Policing Domestic Abuse in Scotland – a social constructionist approach'.

**Name, position and contact address of Researcher:**

Katarzyna Prusak,

Postgraduate Student at

School of Social and Health Sciences  
Abertay University, Bell Street, Dundee, Scotland, DD1 1HG.

0800903@live.abertay.ac.uk

**Please Initial Box**

- |    |  |                          |
|----|--|--------------------------|
| 1. | I confirm that I have read and understand the information sheet for the above study and have had the opportunity to ask questions. | <input type="checkbox"/> |
| 2. | I understand that my participation is voluntary and that I am free to withdraw at any time, without giving reason.                 | <input type="checkbox"/> |
| 3. | I agree to take part in the above study.   | <input type="checkbox"/> |
| 4. | I agree to the interview being audio recorded  | <input type="checkbox"/> |
| 6. | I agree to the use of anonymised quotes in publications  | <input type="checkbox"/> |

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Name of Participant

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Date

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Signature

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Name of Researcher

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Date

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Signature

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